

COMMANDER
ON
TRIAL
(NANA VATI CASE)

B. D. SINGH B. A., LL. B.

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P R E F A C E

This book deals with the criminal proceeding against MR. K. M. NANAVATI, a fair looking person of 37 and Commander of I. N. S. Mysore, who was accused in the murder case of PREM BHAGWANDAS AHUJA, an Automobile dealer in Bombay. The trial at Bombay Sessions Court ended in a verdict of not guilty by 8 to 1 Jury and reference was made to High Court, Bombay, by Sessions Judge Shri R. B. Mehta. The High Court of Bombay, found him guilty of murder and awarded life Sentence. The Governor of Bombay, Shri Shree Prakash suspended the sentence order where upon the Full Bench of the same High Court decided the legality of Governor's Order in affirmative.

This trial is one of the leading criminal trials of India on the point of Governor's order suspending the sentence and creating an unprecedented example by interfering the execution of the Warrant issued by the High Court. As day to day proceeding created a general interest in common people and the matter was taken even to the Parliament and was politically criticised, that is why it was felt that in order to satisfy the curiosity of the Crime story loving people and to give a complete and systematic record of the proceeding to the Lawyers, it should be prepared in a book form.

I want to take this opportunity to make public acknowledgment to the leading News papers of India from which reports the facts are materialised.

Except the statements, cross examination, arguments judgement and documents the matter is moulded in a most convenient and easy reading manner to facilitate the readers.

I am grateful to my friend, Shri S. S. Poddar, B.Com, LL.B. Visharad, for reading the manuscript and offering constructive suggestions and Shri Monoj Dutta and all others for their co-operation.

Calcutta,
August 15, 1960 :

B.D.S.

“During the last 25 years at the Bar and the Bench, I have not come across a single case of this kind.”

--Mr. Justice GAJENDRAGADKAR
The Supreme Court of India.

A car running at a stormy speed on the Flora Fountain Road turned suddenly towards a magnificent building in the beautiful city of BOMBAY, known as "JEEVAN-JYOT". The gate of the Car was opened with a zerking sound and a hand-some man of dominating personality exactly six feet tall came out, pushing the door back and rushed straight towards the upper stairs, a place well known to him.

It was a hot afternoon of April 27, 1959. People were gasping for wind. Pitch on the road was melting, the sea was calm, which was the clear indication of some unexpected storm.

BANG.....! BANG.....!! BANG.....!!! was the sound which naturally diverted the attention of the passers by. This unusual gun shot in a residential flat made people curious to know about the reasons of the unfortunate event. Before the persons assembled outside could know the reason they saw the dramatic turn of an Officer looking man, running down with a naked revolver in his hand. Automatically, it created a curiosity among people assembled outside the gate to know what actually had happened. The well dressed man wearing a spotless Fawn coloured shirt and a pair of dark coloured trousers appeared. From his very appearance it looked as if his excellant character was blotted with some undesirable act, which was clearly reflected from his perplexed appearance. The Durwan of the building tried to stop him but he could not.

POLICE ! POLICE !! cried the mob, but the man did not care for police, got into the Car and without properly answering the queries of DURWAN and others, he went on, though he uttered some thing but exactly he could not remember as his conscience was guilty.

Taking a sharp turn he drove fast assuring the people outside, in hurry and went to a Police Constable on duty. He slowed down his car. It was Government House Lower Gate where he stopped for a while and asked the Constable, who was on the fixed post duty, the nearest Police Station ?

"Will you take me to the Police Station" asked the man. "No, I am on fixed post duty and I cannot move from here" told the Constable.

After enquiring of the Police Station and being told that the nearest Police Station was GAMDEVI P. S. he drove away. Now the man was totally undecided and was in half hazzard state of mind, completely perplexed and could not ascertain his further steps. He was under the impression as some thing unpleasant had happened. He had never imagined the consequences which actually happened because only an hour and a half before he was the man who was seen at METRO CINEMA dropping his beautiful blue eyed English born wife with his three kids. What a tragedy it was? That the wife was enjoying a film show on the screen and husband was playing a prominent role in another practical life drama outside the auditorium which was even more powerful and packed with thrills and followed by unexpected events. How for a fate can play with a man no body can guess?

It was Commander Samuel's Office, where Commander in his white official dress was busy with his office routine. Suddenly he was diverted from his official work to an unofficial one, when another officer of same rank stepped in the office. He was well acquainted to him.

"I do not know exactly but I think I killed a man" said the man and asked his advice in this matter where the matter of accident according to his own belief was to be reported. The fact that the Smith & Mason. '38 Service Revolver was used in this unfortunate event created an anxiety in Samuel's mind but he advised him the proper way and asked him to see Deputy Commissioner LOBO a C.I.D. Officer.

Actually this was an extraordinary event which happened for the first time in Commander's pleasant life.

"She is not faithful to me"! She is not faithful to me" !! were the repeated words which were rotating in his mind and even the whole picture of past was coming by and by to his mind, which he could not avoid. Thinking it better to submit himself to Police, he did so and relied upon the theory of accident and struggle.

The accused in this case, Commander Kavas Maneckshaw Nanavati a handsome and well built man of 37, was a man of three battle fronts and had spent eighteen and a half years of his life in the Navy Service.

After completing his training at the Royal Naval College at Dart Mouth, he actually came in service in the last War in the North Atlantic while escorting convoys to Russia, served in the Mediterraneans and was in Burma. During the Arakan Campaign he was highly recommended by Lord Mountbatten for special training for service in an aircraft carrier. He was even marked down to be first Commander of the first air craft carrier which India had bought from England.

The accused, Commander Nanavati who firmly stood in the battlefields and never moved an inch from his stand, crossed deep and endless Ocean could not swim the domestic channel and could not retain patience when he found his suspicion confirmed which he had marked on his arrival from abroad to Bombay shore on April 18, 1959. Only nine days ago of his arrival he was anticipating to meet his wife and children but unfortunately he was involved in a murder case for which he was tried.

This criminal trial of Commander Nanavati raised a storm among the Lawyers, Law students, political leaders and common public and became one of the well-talked famous criminal trials of the World.

The matter was fully investigated by the eminent police and C. I. D. Officers of Bombay and on the circumstantial evidences Nanavati was charged with wilful murder, U/S. 302 I.P.C.

No body knows what happened inside the room where Prem Bhagwandas Ahuja, deceased was combing his hair before mirror. Except the deceased and accused there was no other witness present at the scene of occurrence who could tell the story of struggle or accident.

Commandar Nanavati, was committed to the Sessions of Bombay on June 15 1959 by Mr. M. Nasrulla, Additional Chief Presidency Magistrate of Bombay, who allowed him to be kept in Naval custody. Nanavati was in the Naval shore establishment I. N. S. Kunjali.

Exhibits in the Court :

The skull cap of Ahuja, fixed on a dummy skull, was one of the exhibits produced in the court room, another exhibits produced in the court room was the Smith and Mason. '38 Revolver from which three shots were fired. Bullets, bottles of liquor, a box containing 26 love letters, alleged to be written to Ahuja by his female friends, 13

photographs, different reports and many other articles which were found at the residence of late Ahuja at the time of making the Panchnama, were among the exhibits, which attracted the attention of not only Judge, Jury and Lawyers but also of the common people hearing the proceeding.

Trial Begins :

It was five minutes to eleven, on September 23, 1959, when a big Navy Car escorted by the Provost Marshal of the Navy Commander M. B. Samuel, two bemedalled officers and Armed Naval Police, stopped before the crowded court of Mr. R. B. Mehata, Sessions Judge greater Bombay, and Commander Nanavati, accused in Ahuja murder case, stepped out. The handsome smartly uniformed Commander Nanavati, with an array of Seven medals glittering on his breast, but sad eyed and quiet was hailed with shouts of "Nanavati Zindabad" and Good Luck". This was repeated every time as he arrived at and departed from the Court.

"Not only was the Court room filled with eager visitors excited Journalists, learned Lawyers and Keen Law students but also were the Corridors leading to the Court room on the top floor thronged with a cross-Section of the City's Cosmopolitan population to catch a glimpse of Commander Nanavati or hear a few words of the Court proceedings."

Members of the public milled in the compound of the court and the street, leading to it, specially at the time of the Commander's arrival and departure and over-flowed on to the main thoroughfare at flora-fountain, disrupting traffic and imposing on the police a heavy strain.

The crowds outside was described as much denser than those which came to the famous Balva murder trial of the thirties or even the trial of Robert Hood in London who was defended by the great criminal Lawyer, Sir Edward Marshallball",

The proceeding began as Mr. D. R. Nadkarni, the Court Registrar read out the charge framed against Nanavati under section 302 of Indian Penal Code for causing the death of Ahuja, Proprietor of Universal Motors.

Commander Nanavati, Pleaded not guilty of the charge and claimed to be tried. According to the rules of criminal procedure the special Jury, nine in number took their seats.

"This gentleman in the dock is one of the ablest officers in the Navy and the Victim also happens to be a flourishing businessman dealing in motor cars". By these words public Prosecutor, Mr. C. M. Trivedi, broke the silence of the Court and opened the case for the prosecution.

PROSECUTION STORY

According to the prosecution, Commander Nanavati took a service revolver from his ship, went to the residence of Ahuja at Nepean Sea Road in the afternoon of April 27, 1959 and within a few seconds of his entering Ahuja's bedroom, fired three rounds. Ahuja was later found lying dead in the bathroom.

In a 60-minute address to the jury, the Chief Public Prosecutor narrated how friendship developed between Ahuja and the Nanavati's family and the circumstances in which Nanavati caused death of Ahuja.

He appealed to the members of the jury to come to their own conclusions on the evidence placed before them in a calm manner without any excitement whatsoever. .

The Prosecutor stated that the accused was charged under Section 302, I.P.C., which dealt with murder. Defining the charge of murder and lesser offence of culpable homicide not amounting to murder, Mr. Trivedi said that there were however, certain circumstances which might show that the offence was committed "under grave and sudden provocation". But the provocation must be so grave and so sudden that a man of ordinary, reasonable and rational frame of mind, would temporarily lose his self-control. Whether the accused should or should not have lost or did lose his self-control was a matter for the jury to decide.

Mr. Trivedi told the jury that it was not concerned with the motive behind the offence. Law did not require prosecution to prove the motive, but if elicited, it might help the jury to give its verdict.

Nanavati married Sylvia in England in 1949. The couple had three children, the youngest being of three years. They came to stay in a flat at Colaba in Bombay in December, 1957, as a Naval officer Nanavati had to be away from home for long periods on duty at Sea. During

1958, Nanavati was away from Bombay for about six months.

Mr. Trivedi said that Nanavati was introduced to Ahuja by another naval officer, Lt. Cdr. Yagnik, in July or August, 1950. During the absence of Nanavati at Sea, his wife used to visit Ahuja's house to see his sister, Miss Mammie Ahuja. She also happened to meet Ahuja during those visits. Actually, Nanavati visited Ahuja's house along with his wife only twice or thrice.

During these visits, the Prosecution said, 'some intimacy appears to have developed between Ahuja and Sylvia.' On April 18, 1959 Nanavati returned to Bombay. He took ten days' leave from April 19, and stayed in Bombay. It was during this leave period that the murder of Ahuja was committed.

The Prosecutor told the jury that just before the return of Nanavati, Sylvia, it appeared, had written "some sort of a letter" to Ahuja. During the leave period Nanavati noticed a "sort of inexplicable coldness" on the part of Sylvia towards him. He was unhappy about this change in her attitude, but could not find out the exact reason.

On the morning of April 27, 1959 the date of the offence the couple got up early and took their sick dog to a veterinary surgeon. Later they went to a picture house to reserve some tickets for the afternoon show. They returned home after buying some vegetables at the Crawford Market.

At a breakfast that day, Nanavati asked her the reason for the change in her attitude, but failed to get any answer. He raised the matter again during lunch. As he approached Sylvia, the Prosecutor said, she asked him to keep away. Further questioning elicited a reply from his wife.

To a query as to how she happened to lose her love for him and whether there was anyone else for whom she cherished her affection, she said "yes" Nanavati then asked Sylvia if that person was Ahuja. To this too she replied in the affirmative. This naturally upset Nanavati.

She even acknowledged that she had not been faithful to her husband. This stunned Nanavati. From that moment Nanavati was hot.

Continuing, Mr. Trivedi said that Sylvia apprehended that her husband, in that mood, might do harm either to himself or to others. Fear took hold of her and she tried to pacify him. Noticing the change in Nanavati's express, she asked



Awaiting Supreme Court's Judgment



The Unfortunate Victim



A Cause of this Story

him as to what he proposed to do. Nanavati stated that he was "going to shoot himself." The thought of his children suddenly occurred to him. He asked her whether she was prepared to give up Ahuja even at that stage. Sylvia failed to give a satisfactory reply. The subject was not discussed by them again.

With the children ready to go out for the picture, Mr. Trivedi said, Sylvia asked her husband to accompany them to the show. Nanavati said he could not sit through the picture, but would take them to the theatre. He drove them to the theatre and asked his wife as to when the show would be over. Sylvia told him that the 3-30 show would be over by 6 p.m. He told her that he would be going to the ship and promised to pick them up after the show.

The Prosecutor said that from the theatre Nanavati proceeded straight to his ship and obtained permission from the Commander for the issue of a revolver as was driving to Aurangabad that day and would have to motor through the Jungles. He was given a service revolver with six rounds of ammunition which he loaded there itself. He signed the log book in acknowledgement.

Driving straight to Ahuja's business premises at Peddar Road, Nanavati learned that Ahuja was at his residence, "Jeevan Jyot", at Setalwad Road, off Nepean Sea Road. He proceeded to Ahuja's flat with the revolver fully loaded. A servant told him that Ahuja was at home. He walked into Ahuja's bedroom.

As Nanavati was entering the bedroom, another servant in the kitchen noticed Ahuja parting his hair in front of a mirror. The doors of the bedroom closed behind Nanavati and within a few second two loud reports of shots one after the other were heard. A third shot accompanied by a big noise—"something like the breaking of glass"—was heard immediately thereafter.

The Servants in the house rushed to the room and found Nanavati with a revolver in his hand and Ahuja lying prostrate in the bath-room. Ahuja's sister too rushed to the scene. They asked Nanavati what he had done. Pointing out his revolver at them, he asked them to "keep clear". He then walked out. He was followed by the servants. As he was going out, the Chowkidar of the building, who had already heard the commotion, tried to stop him. Nanavati pointed the revolver at him and told him that he was going to the police station.

The Prosecutor said that when the Chowkidar asked Nanavati why he had done this, Nanavati was stated to have replied : "Well, for his affair with my wife," or some such answer. Driving out of the compound, Nanavati tried to contact the police immediately. He went by way of Malabar Hill and at the Government House gate inquired of a constable where he should go to report an offence. He was directed to the Gamdevi police station.

Not knowing where the police station was, Nanavati drove to the house of Commander Samuel, another Naval Officer, who was standing at the window then, found Nanavati in an agitated state. Nanavati told Samuel, "something very terrible and deadly has happened. I have shot one man." Samuel asked him where and why. To this also, Nanavati said that the incident had taken place at "Jeevan Jyot." Nanavati told Samuel that he wanted to surrender to the police. Samuel directed him to the C.I.D. officer at Crawford Market. He also told him that he would inform D.C.P. Lobo on the phone.

Mr. Trivedi observed that the object of Nanavati's visit to Samuel was mainly to hand over the keys of his flat. He requested Samuel to hand over the keys to his wife at the theatre. He then drove to the C.I.D. office where he made a report to Mr. Lobo in the presence of Supdt. Korde and Inspector Mokashi. The revolver was taken charge of by officers under a panchnama.

17 Witnesses Examined

The Prosecutor said that he proposed to examine 17 witnesses, including Ahuja's servants, his sister, Sylvia, police officers, and, if possible Lt. Cdr. Yagnik, who had introduced Nanavati to Ahuja.

P. W. No. 1 :

The first Prosecution witness Mr. D. Pardasani :

The first prosecution witness examined was Mr. R.D. Pardasani, the plan-maker, who, under the instructions of Inspector Mokashi, drew the plan of Ahuja's flat.

P. W. No. 2 :

Miss Mammie Ahuja's Evidence :

Miss Mammie Ahuja a charming and beautiful lady of 38 and sister of Prem Bhagwandas Ahuja, the deceased, in

her evidences, which were of more importance for the prosecution, disclosed the whole story behind the case and also threw sufficient light on the character of her brother Prem Ahuja, proved much helpful to the defence also.

Miss Mammie Ahuja, informed the court that her brother had told her in January 1959 about his plan to marry Mrs. Sylvia Nanavati, if Mrs. Nanavati could get a divorce, from her husband, she had disapproved of his intention, and had reminded him that Nanavati had children. Her brother had told her that he was aware of the complications involved and that Sylvia would, in any case, leave her husband, she added.

In her examination-in-chief, which lasted about an hour, she narrated how she and her brother came in touch with Commander Nanavati and his wife and the circumstance in which her brother was killed. On the Second day of the trial, unmanageable crowds thronged the precincts of the Sessions Court and many pressed forward to gain entry into the Court-room, which was already overcrowded. The police had a hard time in checking the crowds and in bringing witnesses to the court-room.

Thirty-eight-year-old Miss. Ahuja told the Court that before she and her brother came to reside at "Jeevan Jyot" in Setalvad Road, they had stayed at "Shreyas" on the Merine Drive with their father. Her father died in 1954.

She said that she had known Commander Nanavati and Sylvia who was called into the court-room for identification. She first came to know Sylvia at "Shreyas" in 1956. She met Sylvia for the first time in the company of Mr. and Mrs. Yagnik along with another. Sylvia was introduced to her by Mr. and Mrs. Yagnik, Prem Ahuja was also present at that time. Sylvia might have visited Ahuja's residence along with Mrs. Yagnik six or seven times before April 27.

Mrs. Yagnik had stayed with Sylvia for a short time last year. To Miss. Ahuja's knowledge, Sylvia never visited Ahuja's house alone. Miss. Ahuja had paid three or four visits to Nanavati's house when Mrs. Yagnik had stayed there. At that time, Sylvia was also there. The last time Miss Ahuja visited Nanavati's house was before Diwali in 1958 on the eve of Mrs. Yagnik's departure for Visakhapatnam.

Miss. Ahuja said that her brother, who was 34 years old at the time of his death, was the proprietor of Universal Motors at Peddar Road. He was not married. At the end

of January last, she said, her brother had told her that he might get married to Sylvia if Commander Nanavati divorced her.

Witness disapproved of that suggestion and said : "What about the children ? How can you do this ?" Prem Ahuja had told her that he was aware of the complications involved and that Sylvia was in any case leaving her husband and going away."

Miss. Ahuja joined her brother in Delhi in January last. She had gone there with her cousin. Miss. Ahuja happened to meet Sylvia in the company of Mrs. Zuli Mehta in a Coffee-House in Delhi. Prem Ahuja was also present there. In the course of casual talk, Sylvia asked Miss. Ahuja when she would leave for Bombay. Miss. Ahuja told her that she would leave Delhi by Car on January 29. Sylvia showed her willingness to accompany her in the Car. Later, Prem Ahuja, his sister, Sylvia and a driver left Delhi on January 29, 1959.

The party stayed overnight in a hotel at Agra. The conversation in which Prem Ahuja revealed his plan to his sister to marry Sylvia took place the following morning. There was no further discussion on the subject between them again. After their return to Bombay, Miss. Ahuja was informed by her servant that Sylvia had called at her flat "sometimes". She had not seen Commander Nanavati, after their return from Delhi, till April 27.

On April 27, the date of the offence, Miss. Ahuja said her brother left for his office at 9-30 a.m. She herself had gone out and returned by about 1.45 p.m. when Prem Ahuja had been having his lunch. She joined him at lunch after which they went to their respective bedrooms. She had not noticed her brother taking alcoholic drinks at lunch.

At 4.15 p.m. Miss. Ahuja heard the door-bell ring. Her servant, Anjani, went out to open the door. The door of her bed-room had to be closed before the front door could be opened. Anjani closed Miss. Ahuja's bedroom door to attend to the call. She had just got up to get her sari ironed. As soon as she opened the door after ironing, she heard "a sound of window-pane cracking" in her brother's bedroom. This was followed by "a noise and a scream." She rushed out and asked her servants, Sampat and Anjani, in the hall, to go along with her to her brother's bedroom to see what had happened there. She entered the bedroom, she saw what had crashed on her brother.

Anjani and she tried to open the door of Prem Ahuja's bedroom, but Anjani managed to get in first. As she entered the bedroom, she saw Commandar Nanavati coming towards the door.

To a query by the Judge, she said all this had happened in a matter of seconds. She saw the accused with a gun in his hand. "What is this," she asked the accused. She did not hear any reply. She then rushed in and saw her brother lying in the bath-room attached to the bedroom.

Answering another query from the Judge, Miss. Ahuja said that Prem had on him a towel wrapped round his waist. There was no other cloth on him. She called out "Prem, Prem," but no answer came.

But she had an impression that he said "good-bye" or it might be only her mental impression. Her brother lay in the bath-room with his head towards the bedroom. She did not notice if his legs were fully stretched or not. She asked her servants to put him on a bed and to summon a doctor. Her servants then rushed down. She heard them shout "Pakdo". They did not come back for a short while.

After she had seen her brother lying in the bath-room, it appeared that there was no life in him. The servants returned and lifted the body and placed it on a bed in the bedroom.

She stated that eight or ten days prior to his death, Prem Ahuja told her that he could not make her out from a distance of about six feet. A pair of spectacles belonging to Mr. Ahuja, was identified by her. The police had taken charge of the spectacles stated to be found in the bath-room.

She had been asking for a doctor all along. But the Chowkidar, Puran Singh, who came there, said that they had first to summon the police. The police arrived on the scene within a short time. She identified a towel as the one that was wrapped round his waist at the time of his death. Except removing the body of Prem Ahuja from the bath-room to the bedroom, nothing else was removed from the room by them till the police came.

To a question put by Chief Public Prosecutor, Miss. Ahuja said that she had no liquor permit. But her brother had one.

Cross-examined by defence counsel, Miss. Ahuja said that when the police came she had been sitting near the

feet of her brother. Later she walked up and down the hall. Thereafter they gave her some medicine to put her to sleep. She later found herself in her bedroom.

P. W. No. 3 :

Ballistic Experts Evidence :

Mr. C. T. Bhanagay, the ballistic expert and Government Criminologist for nearly 22 years, earlier gave evidence on the identification of the fire-arm and the bullets used.

He said that he had received from the Bombay C. I. D. a revolver, three empty cartridge cases, three spent bullets and three live rounds for his examination and opinion at his Nagpur Office. He identified the revolver and the other articles (produced in court) as those which were sent to him for examination. For the purpose of comparison he had fired three round from the same revolver.

On examination he found in the revolver which was of a .380 calibre was in perfect working order in all its six chambers kept clean and well lubricated, The live bullets and the empty cases sent to him were also of the same calibre and could be fired from the revolver involved in case. Two of the spent bullets were very much damaged and they got flattened, The markings on them were not clear enough, but on comparison he found that they could have been fired from the same revolver. The markings, on the third spent bullet were clear and he was of the opinion that it had been fired from the revolver in question.

Mr. Bhanagay said that he had arrived at this conclusion after examining and comparing the marks on all the cartridges and bullets sent to him with those on the "test bullets" fired by him from the same revolver, He had found a number of similarities in their "coincidence sequence."

He said that the revolver was a semi-automatic one. Explaining the operation of the revolver in detail, the expert said that when the trigger was pulled, one of the loaded chambers of the weapon came in alignment with the barrel, and the hammer automatically struck the cap of the bullet. For each firing with the revolver one had to pull the trigger. Charring around a wound on a person fired at from this revolver could be caused if fired from a distance of two to three inches. Blackening around the wound could be caused if fired from a distance of six to eight inches.

Cross Examination :

On being cross-examined, Mr. Bhanagay said that the revolver in the case could be called a double-action revolver and the bullets could be said to be of a conical or tapering type.

The flattening caused to two of the damaged bullets, witness said, could be due to their being hit against a hard surface. He could not say as to how many times the bullets fired from the revolver could have come in contact with hard substances, It was also not possible to know the direction in which a bullet would fly after having fired and after having hit a hard substance. The copper jacket of one of the bullets had got torn and this might be due to a heavy impact.

Mr. Khandalavala referred to Major Sir Gerrald Burrad's book. "*Identification of Fire-Arms and Forensic Ballistic*" and asked the expert if he would accept it as one of the best books on the subject. Mr. Bhanagay agreed with the defence counsel.

The defence counsel quoted a passage from the book which read : "If two persons are struggling for the possession of a loaded revolver, it can easily be fired by accident-because most modern revolvers have what is called doble-action as well as ordinary single action." Mr. Khandalavala asked the expert whether he would agree with that statement,

Mr. Bhanagay replied : "I have no reason to dispute, I agree with that,"

On, Mr. Trivedi re-examining Mr. Bhanagay, he said the flattening of the bullets in this case could be caused by their hitting against a hard substance which might also include a human bone of sufficient strength provided they hit the bone tangently and passed off without obstruction.

Mr. Trivedi asked him whether three shots could be fired accidentally in a fight between two persons for its possession. Was it not correct to say that accidental firing, if at all, was possible only once in such a struggle ? Mr. Bhanagay replied : "One struggle will not cause three automatic firing."

Witness said : "Even if a struggle continues, I would not expect three fires (three rounds) to go off, unless the person holding the revolver co-operates so as far as the reflex of his finger is concerned, to pull the trigger."

It was possible, he said, for a bullet to pass through a

part of human body and hit a hard substance which might damage the bullet further by flattening or tearing it.

Asked by the defence counsel, Mr. Bhanagay said that he had no personal experience nor seen a struggle for the possession of a revolver. He had not made any special study of the reflex which would be required in such a struggle. But, from practical experience, he could have an idea that a certain kind of a reflex co-operation was required for pulling the trigger. This reflex pull, he said, could be either conscious or unconscious,

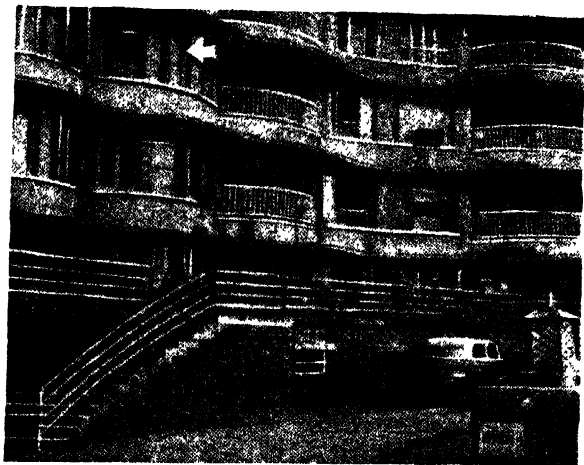
Replying to questions put by the jury, he said, that three revolver had no safety catch. When a revolver was fired there was what was called a "kick-back." Whether the muscle of the hand holding the revolver at the time of the hit would relax or not would depend on whether the person was accustomed to revolver firing or not. He was unable to say if a person accustomed to revolver practise would have his muscles relaxed or not after a shot. It would not be correct to say that in this case the bullet that was not so much damaged as the other two was fired in a sort of a "bullet-catcher." Looking to the undamaged bullet, witness said he did not think after entering a human body it could have come across a bone as to result in flattening.

P. W. No. 4 :

Police Photographer's Evidence :

Mr. V. G. Raje, the Police photographer, produced 13 photographs showing portions of Ahuja's bedroom, the position of the body and the wounds on it. He had taken those pictures about 6-30 p.m. on the day of the offence. He also produced three photographs of the skull of Ahuja taken by him on September 22. The skull had been sent to him by the Police Surgeon of Bombay for taking pictures, to show the marks on it.

During cross-examination, the photographer said that he had also noticed that a glass pane of the window in the bath-room was broken. Replying to another question, he said that he was not sure whether the black mark on a side of the chest as shown in the picture was a wound or not.



A Place of Occurrence



A Departed Soul

Gunner's Evidence :

Mr. Ahmed Ibrahim, Senior Commissioned Gunner of I. N. S. MYSORE, said that he had issued one 0.38 pistol to the accused from the ship on April 27, 1959, under instructions from the Gunnery Officer, Lt. Commander Cooper, after making an entry in the Small-Arms Register. He delivered the pistol and six rounds of ammunition to Commander Nanavati, who is second in command of the ship, in his (Nanavati's) cabin about 3-50 p.m. He did not know when the pistol was to be returned to the ship. The ammunition issued to Nanavati was of '38 calibre. He did not see the accused loading the pistol in his presence.

Replying to a question put by the jury, he said that the ship was then berthed at Alexandra Docks. He knew that Commander Nanavati was on shore leave on that day. Whether on shore leave or otherwise, if there was permission from his superior, he could issue small arms to the Officers of the ship. He did not mention in the register the reason for the issue of the pistol. He could not say when Nanavati left the ship. The pistol was issued to him for a temporary period.

At one stage of the proceedings, both the prosecution and the defence insisted on an answer of a witness being taken on record. This provoked loud laughter from the people inside the court-room, when the Judge, Mr. Mehta, remarked that the Court should not be converted into a stadium or a theatre. That should be understood by all.

MISS. AHUJA CROSSED :

On the third-day of the trial of Commander Nanavati, Miss. Ahuja told the Sessions Judge, that it was not her "inaction" that prevented her from advising her brother against the move. "He was a grown up person. What could I do in the matter ?

She denied any knowledge of the allegations made by the defence about her brother's "love affairs" with at least three different married women during 1958-59. She did not know that her brother had entertained women to drink in parties in his house and had moved about with girls.

She was surprised when she came to know that bottles

of liquor had been seized from her brother's bed-room after his murder on April 27, 1959.

Miss. Mammie Ahuja stated that she had seen her brother, Prem, taking liquor occasionally. She had, however, not seen him taking a drink in the mornings or in the afternoons. She also did not know where the liquor was stored in the house. It was not stored in the dining-room but it might have been stored in Prem's bedroom. She did not know who served him the drinks nor could she say how many times in a month she had noticed him taking liquor. She used to see him drink very rarely.

She said that she did not know whether the liquor permit of her brother was for 6-2/3 ounces of brandy only. She was not aware that there were 21 bottles of liquor in the bedroom of her brother on the day of the alleged murder. After the shooting incident, she came to know that some bottles of liquor had been found in her brother's bedroom. She was surprised when she came to know about that. Her brother had told her that he had a permit but she had never seen it. She identified the signature of her brother on the liquor permit as well as on a certificate.

Miss. Ahuja further said that she had not seen her brother entertaining women to drink—in parties at their residence. She had attended her brother's parties only two or three times at their residence. He had not given many parties there.

To her knowledge, Miss. Ahuja said Prem had not taken liquor in the morning or in the afternoon of the day of the incident. Apart from servants, only she and her brother resided in their flat.

The defence counsel, asked the witness: "Were you personally aware that your brother, in the years 1958-59, was having love affairs with at least three different married women?" She replied in the negative. She did not know that a bundle of love letters had been found from the bedroom of her brother at the time when the panchnama was made.

In 1947, before partition, they (witness, her brother and their father) were living together in Karachi. Her brother was not married.

To a query by the defence, Miss. Ahuja said that she was not aware that her brother had enticed one young unmarried girl from the custody of her parents and, subsequently, had filed proceeding in Bombay for the custody

of the girl, whose parents were against her marriage with Prem Ahuja.

She said she had known one Pam (Pramila) Dhavan. She was not aware whether her brother had taken Pam away from the custody of her parents. She did not know the hand-writing of Pam. She also did not know any girl by the name of Lizz or June or Betty or Asha, the names suggested to Miss. Ahuja by the defence. She had not seen her brother moving about with girls. She did not know whether her brother was in intimate terms with a married woman at Lonavia.

Miss. Ahuja said it was not true that her brother had gone through a marriage ceremony with a woman named Pam. Pam and her husband visited their (Ahuja's) house quite often whenever they were in Bombay.

When the Judge, asked whether it was necessary to go into such details, Mr. Khandalavala replied : "It is highly essential to show the character of Prem Ahuja."

Defence counsel : Is it correct to say that Mrs. Nanavati Sylvia was a frequent visitor to your brother ?

Witness : It would be more correct to say that Mrs. Nanavati was visitor to our residence sometimes. This also what my bearer, Sampat, had told me.

Mr. Khandalavala refuted that statement as it clashed with the statement she had made to the police. Miss. Ahuja said that by "frequent" she had meant "sometimes".

Mr. Khandalavala said that he would suggest that Mrs. Nanavati used to visit Prem Ahuja under the pretext of visiting his sister. The witness said that, after Mrs. Yagnik had left Bombay, Mrs. Nanavati never came to see her. It was not true, she said, that Mrs. Nanavati used to visit Prem Ahuja under the pretext of meeting her.

Miss. Ahuja stated that, in January, she had been to Delhi. Prem was staying at Ashoka Hotel. She stayed there only for a day. She did not know whether Mrs. Nanavati was regularly visiting Prem at that hotel. She did not even know that Mrs. Nanavati was in Delhi until she met her at a Coffee House. Miss. Ahuja left Bombay on January 15 for Agra and thereafter, proceeded to Delhi with her cousin. She reached Delhi on January 19 or so. Her brother had gone to Delhi before her as he had some work there.

On January 25 or 26, she persuaded her brother to return to Bombay by car. Before she invited Mrs. Nanavati

on the 27th to go along with them by car from Delhi, her brother had not told her that he had invited Mrs. Nanavati to do so. So far as Miss. Ahuja knew, Commander Nanavati was not in Delhi at that time. Mrs. Nanavati told her that she had gone there for a holiday. When she invited Mrs. Nanavati to accompany them in the car, Miss Ahuja did not know that there was any "affair" between Prem and Mrs. Nanavati. "If I had know about it, I would never have invited Mrs. Nanavati to accompany us in the car," She said.

She did not have any suspicion until the talk she had with her brother about Mrs. Nanavati in Agra on January 29. It was at a hotel in Agra, in the morning, that Prem had told his sister about the matter. In the hotel, Prem, Miss. Ahuja and Mrs. Nanavati, stayed in separate rooms. That day, Prem went to Miss. Ahuja and told her that he wanted to tell her "something". Nobody else was present during that talk between the witness and her brother. Mrs. Nanavati was not there.

When her brother told her about his plans regarding Mrs. Nanavati, Miss. Ahuja was "surprised". When she asked him "about the children of Nanavati," he told her that he was aware of the complications and that everything depended on Commander Nanavati.

Miss. Ahuja said that she did not speak about this matter to Mrs. Nanavati as they left Agra soon after by car. After returning to Bombay, Miss Ahuja made no attempt to speak about this matter with Sylvia. It was only when her servants had told her that Mrs. Nanavati used to come for dinner, that she came to know of Mrs. Nanavati's visits to their residence.

Her brother had not prohibited her from talking about the (marriage) topic with Mrs. Nanavati.

Miss. Ahuja said that she did think that Mrs. Nanavati's marriage with Prem was not proper.

Prosecution counsel: What prevented you from advising your brother against this marriage ?

Witness : He was a grown up person. What could I do in the matter ?

Counsel : The real reason for your complete inaction was that you were a party to this.

Witness said that it was not true. Miss Ahuja stated that while in Delhi, Mrs. Nanavati had stayed with Mrs. Zul'e Mehta. That was what Mrs. Nanavati had told her.

Continuing, Miss. Ahuja said that her brother had told her that Mr. and Mrs. Nanavati were not getting on well and that Mrs. Nanavati was leaving her husband in any event.

She said that, in April 1959, they had three servants, Deepak Sampat, Anjani and Sunderrao. All of them continued to be in her service and in her pay.

She stated that she had asked an advocate friend, Mr. Ram Jethmalani, to watch the present case. That was a few days after the shooting incident. Mr. and Mrs. Jethmalani were the friends of Miss. Ahuja and her married brother Mr. Nanda Ahuja. She said she had discussed the case with Mr. Jethmalani, but she had not discussed a word about it with her servants.

Miss. Ahuja said that she had given evidence in the lower court. Her lawyer had watched the case in that court and two of her servants had also given evidence there. Her servants were not taken to the lawyer to discuss the case.

Replying to another query by defence counsel, the witness said that she was about to get up from her bed when the doorbell of her flat rang in the afternoon of April 27, 1959.

Q—Were you resting or getting out of the bed when the bell rang.

A—I was just getting out of my bed. I did not state in the lower court that I was getting up from my bed. I was not sleeping, I was lying on the bed. I did not state to the police also that I was resting and was just about to get up.

Q—Had you heard only a window pane crash and a scream on that day.

A—I heard a window pane crash, a scream and a noise. It was true that I had not stated in the lower court that I had heard a noise besides the cracking of a window pane and a scream. But it was not correct to say that I had invented the hearing of the noise in this court. I did not know if the noise I heard was that of a gunshot. I had never heard a gunshot in my life, I had heard only one noise. The noise I heard was "like a bang". That was my impression. I can not give any reason for not mentioning this to the lower court. The scream I heard was that of a person in agony. It was my brother's and I heard it, while opening the door of my room.

Q--Do you suggest that your police statement was incorrect ?

A--No, I do not I had stated to the police that, when I entered my brother's bedroom, I saw Nanavati standing near the door facing it, as if about to come out of the room. He was holding a revolver in his hand.

Q--Was that statement correct ?

A--All that I can say is that Nanavati was coming out.

She admitted having stated to the police that they had taken Prem Ahuja to a bed prior to his death. On being confronted by that statement she said she was only hoping that he was alive. She was only actually waiting for the doctor to say that he was dead.

She said that what she had deposed in court was what she heard and seen on that day. When she gave her statement to the police, she was in a "doped condition" because she had been given an injection and was half a sleep. On being asked if her nerves had been shattered, at that time, she said that she was only worried then. She admitted that she used to take sleeping pills sometimes, prior to the incident, because she suffered from migraine.

It was not true that she had said that it could be more than 20 seconds between the ringing of the bell and her hearing of the noise "with the deliberate object of shutting out the defence story of struggle," she said.

Defence counsel showed the witness a number of photographs taken charge of by the police under a panch-nama from the premises of Prem Ahuja and asked her if she could identify the woman in them. She identified the photographs of Mrs. Nanavati and Pam. It took 150 minutes to cross examine her.

Re-examination of Ballistic Expert :

Earlier, when the court resumed the hearing of the case, Mr. C. E. Bhanagay, a Government ballistic expert, who was examined before, was recalled by the court to get certain points in his evidence clarified.

Explaining what he ment by the double action of a revolver of the type exhibited in the case, he said that the pulling of the trigger in such a revolver produced two results. One of them was the rotation of the chamber to bring the next cartridge in alignment with the barrel

and the other was the release of the hammer. That was one way of operating the revolver. Another way was first to keep a cartridge in alignment with the barrel and then to pull the trigger.

Replying to a question by the Judge, the expert said that if a bullet fired from a revolver accidentally or intentionally hit a hard substance and got flattened, like the bullets exhibited in the case, he was inclined to think that "it may not enter a human body". Assuming, however that such a bullet entered a human body, its penetration in the body would be very shallow. Obviously, the damage caused by such a bullet would be very much less than that caused by a bullet directly hitting the target.

If the damage caused to the internal organs of the body was of a high degree, like the fracture of a bone, such an injury was more likely to be the result of a direct hit from the muzzle as opposed to a rebounded hit, the witness said.

Cross Examination of Ballistic Expert :

Defence—Have you got any medical qualification ?

Witness—No, I have no medical qualification.

Defence—Is it correct to say that the observations you have made are surmises and not based on a study on the subject ?

Witness—No, it is not correct. I have carried out experiments by firing on mutton legs for demonstration to police officers. My observations are based on the result of those experiments and a general study of ballistics. In all these experiments, the bullet was fired directly into mutton legs from different ranges.

When the shot is fired at a point blank range, that is almost touching the target, the wound is of an explosive type, with blackening and scorching round about the wound, and the track of the bullet is fairly straight. Any bone in between is fractured to pieces ? The exit wound is bigger than the size of the bullet. As the distance from which the shots are fired increased, the size of the entry wound is reduced and the scorching and blackening becomes less, disappearing at one stage.

Defence—Can you control the trajectory of a bullet after it had rebounded ?

Witness—No, I can't. It is not possible to experi-

mentally ascertain the damage caused by rebounding bullet. My opinion is based on "commonsense observations" that a rebounding bullet loses its velocity and will therefore naturally cause less damage than a high velocity, bullet travelling along its longitudinal axis with its drilling action.

Defence—Can you determine the damage which a rebounded bullet will cause ?

Witness—No. It is not possible to determine by any instrument or any scientific basis the degree of damage which a rebounded bullet will cause. I shall not be able to cite off hand any treatise on which I have based my opinion.

Defence—Can a rebounded bullet kill a man ?

Witness—If a rebounded bullet hit a vital part, it may kill a human being. A shallow penetration can also be into the trunk of a body. Even in a shallow penetration, it can cause the death of a person if the bullet hit a vital part. If a rebounded bullet has sufficient velocity to split a bone, it can do so.

Defence—Is it possible to lay down any fixed principle on the velocity of a rebounded bullet ?

Witness—No. It is not possible.

Replying to a question put by the Chief Public Prosecutor, the witness said that if a bullet hit a glass pane six feet away, broke it and rebounded to a distance of six to eight feet, he did not think that it could cause the fracture of a heavy bone. This was on the hypothesis that the damage caused to the bullet was similar to that caused to the bullets exhibited in the case.

P. W. No. 6 :

Mrs. Yagnik's Evidence :

Mrs. Yagnik, wife of a naval officer, said "I met the accused and his wife in Cochin in 1954. My husband was then posted there. As the accused and his wife had no accommodation, they stayed with my family. I came to know Prem Ahuja and his sister in 1947. In 1945 I and my husband came to Bombay, where my husband Lt. Commandar Yagnik had been transferred. My husband was posted to Vizagapatnam in August, 1955, but I followed my husband three months later. From August 20 to October 30, I stayed with Mrs. Nanavati. During that time, Miss Ahuja used

to visit me quite often and, in return, I used to go to the residence of Miss. Ahuja with Mrs. Nanavati and children. Between August and October, I might have visited Miss. Ahuja six or seven times. After going to Vizagapatanam in October, I did not come to Bombay except to give evidence in this case".

Concluding her evidence Mrs. Yagnik said that they (she and her husband) introduced the Nanavati's family to Prem Ahuja and his sister in 1956. She did not know if they had known each other earlier. She was not aware of any love affair between Mrs. Nanavati and Prem Ahuja. Defence counsel did not want to cross-examine Mrs. Yagnik.

P. W. No. 7 :

Lt. Commander P. C. Yagnik's Evidence :

Lt. Commander Pravin C. Yagnik giving his evidence said "I know the Ahuja family for more than 25 years. I came to know the accused in 1941. The accused and his wife stayed with me in Cochin in 1954. I have not personally stayed with the Nanavati's family. When I was transferred to Vizagapatanam in 1958, and as I had to vacate my residential accommodation in Bombay, my wife made personal arrangements with Mrs. Nanavati to stay with her for the schooling of their children."

"I do not known any affair between Mrs. Nanavati and Prem Ahuja. Whenever I came to Bombay on duty for short periods, unaccompanied by my wife, I stayed with Prem Ahuja. I had written a letter to Prem Ahuja informing the latter that I am expected in Bombay on April 27 on official duty, and that I expected to take ten days' leave to go to Saurashtra to see my father and other relatives. I arrived at the residence of Prem Ahuja about 7 p.m. When I went to the flat I saw a number of police officers. I was told that Prem was dead." The defence counsel did not wish to cross-examine him.

P. W. No. 8 :

Servant's Evidence :

Anjani Rapa, Prem Ahuja's bearer, informed the Court that, on April 27 Prem Ahuja left for office about 9-30 a.m.

and came back for lunch at 1.45 p.m. Miss. Ahuja, who had also gone out came five minutes later and joined her brother at lunch. After lunch they went to their respective bedrooms.

"Prem Ahuja had asked me to wake him up at 4.15 p.m. for tea. Accordingly, I served him tea. As the watch was not showing correct time Prem telephoned to ascertain the time. I then returned to the kitchen. Later, I went to Prem's bedroom to take the empty cup and to put the telephone in the hall. Prem was then in the bathroom, taking a bath. While I was preparing tea for Miss Ahuja, I heard the door-bell ring. It was 4.20 then. When I opened the door I saw the accused there. At that time, I was in my civilian clothes. The accused had come to our house previously. The accused was holding a paper packet in his hand."

The accused inquired of me whether my master was in. On my reply in the affirmative, the accused went into the bedroom of Prem Ahuja closing the door behind. Miss. Ahuja was then in her room. As the witness was standing near the dining table, I heard 'three noises' from the bedroom of Prem Ahuja. The first two were something like "tap tap" and the third was the breaking of a glass pane. The noise came almost immediately after the accused had gone into the room. Miss. Ahuja came out inquiring what the noises was and asked me to rush to the room." The witness continued.

"On entering the room, I saw the accused standing there. I was then facing in the direction of Prem Ahuja, who was lying in the bathroom. The accused had a pistol in his hand. As I opened the door, the accused turned, pointing the revolver towards me, and asked me not to come in his way, otherwise he would shoot me (witness). The accused then walked and passed me, pushing me aside." The witness said.

Miss. Ahuja, who was there said that the accused had killed her brother. The accused, however, pushed her aside and proceeded further. Miss. Ahuja then asked the witness to call the police and a doctor.

The witness then went downstairs and told the watchman there that the accused was going away after killing his master. By then, the accused was getting into his car. They stopped the car. The witness stood in front of the car. The watchman asked accused not to leave the place until the police arrived. The accused said that he would

go to the police station and surrender himself. The accused then drove away in his car.

Cross examined by the defence counsel, the bearer said that he did hear the watchman asking the accused to wait till the police arrived, but could not hear any further conversation between them as he had moved to front of the car, by then. There was some other conversation also between them, he added.

Defence counsel—You did not make any mention of the glass pane breaking in your police statement.

Witness—I had told the police about the breaking of the glass pane. As I was standing in the dining hall, I did not hear any scream at that time. I first heard two pistol shots. The third pistol shot was accompanied by the sound of the breaking of a glass pane.

The bearer, who was being cross-examined by the defence counsel, before Mr. R. B. Mehta, the Sessions Judge, on the fourth day of the trial of Commander Nanavati, also refuted the suggestion that he had received instruction "from someone" in this regard.

After the cross-examination of the bearer which lasted nearly three and a half hour, Ahuja's cook, Deepak Sampath was examined by Mr. C. M. Trivedi, Chief Public Prosecutor.

The Judge and the members of the jury, accompanied by counsel, visited the scene of offence, two days later.

P. W. No. 9 :

Cook's Evidence :

Defence counsel—You have stated in evidence during examination-in-chief before the Sessions Court that there was a second conversation between the accused and the watchman on April 27, which you could not hear.

Witness—I had heard the watchman asking the accused not to leave the premises until the police had arrived and accused replying that he would himself report the matter to the police. I had stated that I could not hear the reply given by the accused in the subsequent conversation between them as I had by then moved in front of the car of the accused.

Defence counsel—Did you tell the police that there was

a second conversation between the accused and the watchman which was not audible to you ?

Witness—Yes, I did.

The witness denied the defence suggestion that this story of a "second conversation was a deliberate invention" as a result of tutoring.

According to the witness, he had stated before the committal court also that there was some conversation between the accused and the watchman which he could not hear. He denied that the watchman and he stood in front of the car. He said that the watchman stood by the side of car. It was not true that besides the watchman and himself there were any other servants present at the time when an attempt was made to stop the car. Anjani said that Deepak Sampath arrived as the car was about to start while the other servant, Sunder Rao did not come down at all.

The car of the accused was not in motion when he was in front of it. As he came downstairs, the accused had already taken a turn and the car was in front of the building. He then went in front of the vehicle. Before that, the accused had stopped the car.

The bearer stated that no one had tutored him after the day of the incident to say that he had heard the noise of glass panes breaking. He had no talk with other servants in the house or Miss. Ahuja about the case of the incident. Nobody had given him any instructions in regard to this. He said that he had seen Mr. R. Jethmalani, an advocate, stated to be watching the proceedings on behalf of the relatives of Ahuja, only in the lower court. He had no talk with the Advocate.

Anjani stated that as he hurried towards the bedroom of Ahuja on hearing the noise, Miss. Ahuja followed him. He opened the door. The accused did not appear to be frightened when he saw him to enter. The accused pointed a pistol at him and said in a loud voice that if witness came in his way, the accused would kill him. The pistol was pointed at his chest from a distance of a few inches. The bearer then raised his hands and stood there. Miss Ahuja pushed him (the bearer) aside. The accused then pushed her aside. It was not true that the accused had pushed witness aside.

When witness entered the bedroom, the accused was facing the bathroom. He was then at a distance of about

two to three feet from the door of the bathroom. On the bearer opening the door, the accused turned towards the direction of witness. As the witness came within one or two feet, the accused turned towards him and uttered a threat.

It was not correct to say that the accused was coming out when the bedroom door was opened.

He denied that the accused had not held out the threat of shooting any one who came in his way. It was not true that the accused went out of the room without saying anything. The threat were uttered by the accused only once. The accused did not point the pistol at anyone else. The bearer did not follow the accused as the latter left the bedroom. He did not see Deepak till the accused had left the bedroom. He saw Deepak near the car.

When the accused left the bedroom, the bearer was inside the room. Miss Ahuja was then shouting, "send police and a doctor." He was frightened at that time. He saw the accused stepping out of the bedroom, but did not look at him. He had not told the police or the lower court that the accused opened the main door and went out.

The bearer said that it was not true that water was given to his master after he had been placed on the bed. He had made no such statement to the police. Anjani, who answered the call at the door, did not go to the kitchen later to prepare tea. He had prepared the tea before the bell rang. It was not correct that the door between the kitchen and the main hall was closed when Miss Ahuja shouted to the servants to come out. It was also not true that they had not heard any noise before and that after coming out of the kitchen, they rushed to the bedroom to find what the noise was about.

Answering the question why he did not discuss this incident with other servants in the house, the bearer said that they had seen the incident with their own eyes and there was no need to discuss it among themselves. He had not inquired till now about the relationship between his master, Prem Ahuja, and the accused. No one had read or explained his police statement to him before he gave evidence at the lower court or the Sessions Court.

The bearer said he knew what liquor was. He had not served liquor to his master, but he knew that his master, used to drink in the evenings when friends came.

Male friends as well as female friends used to visit his

master. The bearer did not serve them liquor. The liquor was kept in a cupboard and he had seen the bottles when opening the cupboard for taking out his master's clothes. Miss. Ahuja never opened her brother's cupboard. No liquor was kept in the dining-room or in any other place. His master threw parties, sometimes once in a month or a fortnight. He used to stand drinks for his friends sometimes at dinner. He used to take drink in the sitting room and not in the bedroom. Miss. Ahuja was not in the habit of coming into her brother's bedroom. The bearer had not opened the cupboard in the bedroom in the presence of Miss. Ahuja.

Sometimes, Prem Ahuja used to take liquor in his bedroom. At such times, he would order soda and the bearer would get it. He had not seen his master taking liquor without soda. He used to take soda inside the bedroom. He would keep the soda inside the room and come out. He was not aware as to what types of liquor his master consumed. He did not know the difference between gin, whisky, rum, bear, brandy, wine and Benedictive. He had no knowledge of the seizure of 21 bottles of liquor from the room of his master on the day of the incident. He knew that there were some empty bottles and some containing liquor. He was not aware of the fact that the bottles were kept in suitcases on top of the cupboard.

The bearer identified a photograph shown to him as being that of Mrs. Sylvia Nanavati and said that he had seen her during three or four of her visits to his master's flat. During those visits, even if Prem Ahuja was at home she would talk to Miss. Ahuja and go. The bearer had seen Mrs. Sylvia Nanavati talking when the latter was alone in the flat.

The bearer had seen Mrs. Nanavati coming to see his master on a number of occasions when Miss. Ahuja was away. He had informed Miss. Ahuja three or four times about the visits of Mrs. Nanavati. He had said this when Miss. Ahuja made inquiries about stocks of butter and other articles getting exhausted. Miss. Ahuja had not said anything when informed about Mrs. Nanavati's visits. The bearer had gone to his village on leave from January 4 to April 1. He had seen Mrs. Nanavati visiting his master since the beginning of 1958. Mrs. Nanavati used to come in the morning, in the evening or at nights.

Anjani said that before April 27 he had seen Commander Nanavati visiting his master's flat on two occasions. The first visit was for a dinner and the second for a friendly chat. Both the visits were in 1958.

Another Cook's Evidence

Deepak Sampath, 24-year-old cook of Prem Ahuja, said that at about 4-30 P. m. on April 27, Anjani and he were preparing tea in the kitchen. On hearing the door bell ring, he asked Anjani to see who was at door. He later heard someone asking Anjani, if his master was in. He came out to see who he was. The cook saw the accused opening the door of his master's bedroom. The accused had then a brown envelope in his hands. The accused called out Prem by name as he opened the door. At that time, the cook saw from the pantry his master parting his hair in front of a dressing table in the bedroom and closed the door behind him.

As the cook was returning to the kitchen from the pantry, he heard the noise of glass breaking. Then he went to the dining room and saw Miss. Ahuja coming out of her bedroom. Anjani, then in the dining room was coming towards the kitchen.

Miss. Ahuja asked them what the noise was about. Miss. Ahuja and Anjani then entered the bedroom of his master. The cook was also about to go to the bedroom. Deepak saw the accused threatening to kill them, if they came in his way. He got frightened and went towards the kitchen. The cook saw a pistol in the hand of the accused. Anjani went downstairs, to be followed soon after by witness. He saw Anjani stop the car by standing in front of it. He noticed the watchman asking the accused why he had killed his master. The accused then stated that he was straightway going to the police station. The cook was then about five to six feet away.

After the accused had left, the cook returned to the flat. He saw his master lying dead in the bathroom. There were blood stains in the bathroom. He and other servants lifted his master and put him on a cot in the bedroom.

Before the incident, the cook had seen the accused twice in his master's flat. Later he saw the accused at the C. I. D. Office. Mrs. Sylvia Nanavati, who was called into the court-room was identified by the cook.

Watchman's Evidence :

Puran Singh Watchman of "Jeeven Jyot" where Prem Ahuja lived, stated in his evidence that he had asked the accused why he had killed the saab, (Ahuja). The reply of the accused according to witness was "I had a quarrel with him, he had connection with my wife. I killed him."

Cook's Cross Examination :

Deepak Sampath, the cook of Prem Ahuja who was cross examined by Defence Counsel, said that the Pistol in the direction of witness Anjani's chest and threatened to shoot down any one coming in his way. At that time, the accused had raised his left hand. That was the only threat uttered by the accused. The accused did not point the Pistol at any other person. Seeing this, the cook frightened and rushed into the kitchen. He did not see the accused going out of the bedroom. The accused did not point the Pistol at witness. He had stated before the Lower Court that the accused had pointed the revolver at Anjani. He denied having stated before the Lower Court that the pistol was pointed at him. He also denied that he was giving false evidence as a result or torturing what he stated before the Session's Court was true. Then a photograph of a woman was produced before him, the witness identified it and said that he had seen that woman visiting his master's flat.

Mrs. Nanavati's identification :

She, who was brought into the Court Room was indentified by the witness as the Memsahab who visited his Master's flat. She often came to see his master. Since the time he joined his master he had seen her visiting his master's flat.

She used to come sometimes in the afternoon and sometimes in the evening (at dinner time). Only once had he seen her visiting his master's flat in the morning. He could not say how many times in a month she came. He had mentioned about her visit to Miss. Ahuja only when food stock exhausted. Besides this he had no other talk with Miss.

Ahuja about that woman, When he told Miss. Ahuja about the visits of Memsaab she did not ask him who the Memsaab was.

COMMANDER SAMUEL'S EVIDENCE

P. W. No. 11 :

Commander Michael Benjamin Samuel, P.M. Indian Navy and Commanding Officer of the Naval Detention, stated before the Court that on the afternoon of April 27 he was standing at the window of his study room in his flat on the ground-floor of "Moon-light" on New Queen's Road. The window in which he was standing faced the road. He saw a gentleman approaching him, whom he recognised as Commander Nanavati. Commander Nanavati appeared to be in a very dazed state. He came upto the window and told Commander Samuel something very terrible had happened. Witness asked about the matter, Commander replied, "I do not quite know, what had happened but I think I had shot a man."

Commander Samuel asked "how did it happen ?"

"That man had seduced my wife and I will not stand it," Nanavati said.

Then witness asked him where the gun was ?

Nanavati told him that it was in the Car.

Commander Samuel asked him to come inside and explain everything to him calmly. Commander Nanavati looked very dazed and told the witness "No. Thank you. I want to go. Please tell me where I should go and report".

Commander Samuel then instructed him to go to the C. I. D. office and report to Mr. Lobo. Nanavati asked Commander Samuel to phone Mr. Lobo which the latter promised to do. Nanavati walked towards his car and then came back to Commander Samuel, put his hands into his pocket and drew out a bunch of Keys and asked Commander Samuel, to deliver the same to Sylvia, his wife. Commander Samuel later rang to Mr. Lobo and told him that an officer, Commander Nanavati by name, was involved in a shooting affair and that he was on his way to report the matter to him. He also told Lobo over the phone that Commander Nanavati was driving his own Car.

Witness could not contact Mrs. Nanavati. But in the evening an officer from the C. I. D. requested

Commander Samuel to hand over the Keys and he complied. Commander Samuel said that he was not Nanavati's Superior. They were of the same rank. Nanavati was senior to Commander Samuel.

Replying to a query by Defence counsel, Samuel said that Commander Nanavati when he talked to him, he spoke in a disjointed and incoherent manner and Commander Samuel could not make sense from what he had said.

P. W. No. 12 :

Evidence of Mr. John Lobo, Senior Dist. Superintendent of Police Ahamadabad City

Witness said that he was working as the Deputy Commissioner of Police, Crime Branch, Bombay, on April 27, 1959. When he was in office in the afternoon of that day at about 4-45 p. m. he received a telephone from Commander Samuel, stating that he had directed Commander Nanavati to surrender to him, as Commander Nanavati had stated that he had shot a man. Mr. Lobo asked Commander Samuel whether Nanavati was coming under escort, or alone. Commander Samuel told him that Nanavati was driving his own car. Then Mr. Lobo sent for Superintendent Corde and Inspector Mokashe of the Crime Branch. After a few minutes Mr. Lobo heard a voice outside his room, and asked the person to come inside. Nanavati came in and sat on a chair in front of the table of witness and then made a statement to Mr. Lobo.

Superintendent Corde, Inspector Mokashe were present at the time of the making of statement.

Nanavati in Custody :

After making the statement, Commander Nanavati told Mr. Lobo that weapon and the ammunition were in his Car. Mr. Lobo directed Inspector Mokashe to take Commander Nanavati under custody and also take charge of the articles produced by him. Mr. Lobo also asked Mr. Mokashe to investigate the offence further.

Sub-Inspector Phansalkar of the Esplanade Police Station, who was attached to the Gamdevi Police Station on April 27, 1959, said that when he was on duty, Pooran Singh watchman of a Building Seetalwad Road made a report to him and in consequence of that he proceeded to the place of alleged offence with the watchman.

He noticed that a Doctor was present in the flat and came to know that Prem Ahuja was dead. The body was lying on a bed in the bedroom in a pool of blood. He then made enquiries of Miss. Ahuja but did not record her statement. He then sent for Inspector Tanpaku and Dy. Inspector Gautam. On their arrival at about 15 or 20 minutes later they made a Panchanama and witness assisted them.

P. W. No. 13 :

Mr. R. S. Taneja, Sales Manager, Universal Motor's Evidence

Witness said that Prem B. Ahuja was the Proprietor of the Universal Motors. On April 27, he came to office at 9.30 a. m. and went home for lunch at about 2 P. M. When witness was sitting in the show-room near the entrance a gentleman came to him at about 3-30 or 4 p. m. enquiring, if Mr. Ahuja was in. He was in civilian clothes.

Witness identified the accused as the gentleman who had called at his office that day. Witness told the accused that he did not know when Mr. Ahuja would be coming back to office. Mr. Taneja asked him whether he had any message for Mr. Ahuja, the accused replied 'No, Thanks'. Witness came to know of Ahuja's death the same afternoon. He saw the photographs of the accused in Newspaper and then realised that was the accused who had called at the office to make enquiries.

P. W. No. 14 :

Constable M. R. Desai's Evidence

Mr. Desai who was on duty at the lower gate of Raj Bhawan stated that the accused who came in a car about 5 P. m. on April 27, asked him to conduct him to the nearest police station. The accused was then directed by the witness to go to Gamdevi Police station. As witness was on fixed post duty, he could not accompany the accused. He identified the accused in the Dock.

P. W. No. 15 :

Dy. Inspector Gautam's Evidence

Mr. Gautam, Dy. Inspector of Gamdevi police station stated that he was summoned from his quarters at Maharbouri about 5-30 p. m., on that day as a shooting incident

had taken place at Seetalwad Road. He reached "Jeewan Jyot" at 5-35 p. m. where he found Ahuja dead. In the presence of Panches he drew a Panchnama of what was found there. He found that the accused had a towel round his waist. He noticed a punctured wound in the middle of the chest, another on the left side of the head and the third one on the palm of the left hand between the little finger and the ring finger. He also noticed some contusion on the left palm.

Deputy Inspector Gautam of Gamdevi police station, who took charge of what was found on the scene of offence on April 27, 1959, under a Panchnama, said that he had noticed all the pieces of furniture in the bedroom in their normal position. The top glass pane of a window in the bath-room had broken, the glass pieces lying on the floor. He also recovered two spent bullets, a pair of spectacles and a chappal from the bath-room and another chappal from near the foot of the cot in the bedroom. There were blood stains on the western wall in the bath-room and drops of blood trickling down the wall. The bath-room door handle and a portion of the door were also blood stained. From a chest of drawers he took charge of 26 letters and two photographs inside covers and also seized bottles containing various types of liquor and some empty bottles from two suitcases and the wardrobe, which he produced in the Court. He recovered an empty brown paper envelope bearing the name of Lieut. Commander, K. M. Nanavati. He made a Panchnama of all the articles seized. He handed over investigation of the case to Inspector Mokashi.

In cross-examination, he said that he did not take charge of the glass pieces found in the bath-room as he did not consider it necessary to mention it in the panchnama. He had recorded in the "Panchnama" whatever he thought was important to mention. He did not search any other part of the flat except the bath-room and the bedroom.

On finding the two spent bullets, D. I. Gautam looked in the bath-room and the bedroom for any marks of the bullet having rebounded. He did not see any marks on the walls, the floor or the ceiling, if he had noticed any such mark, he would have drawn the attention of the panchas and recorded it as it was a matter of primary importance. He had seen such bullet marks in his experience as a police officer. Different types of weapons were used at the

"shooting gallery" at Naigum, where he had noticed many of the bullets rebounding without hitting the target. He had no knowledge if a same resulting bullet would leave a mark or not. He also looked for fire-arms in the bedroom and the bath-room but he could not find any. He also failed in his efforts to find any-thing which could give an indication of the cause of death,

He denied the defence suggestion that he had "invented the entire story of searching for "rebounding marks" after he or his superiors had come to know of the replies of the ballistic expert during cross-examination.

P. W. No. 16 :

Captain Kohil, Examined

Captain Surendranath Kohil, Commanding Officer, of the I. N. S, Mysore, of which Commander Nanavati was second in command, stated that the accused who had proceeded on leave, approached him for permission to draw a revolver from the ship on the ground that he needed it for personal safety, while going to Aurangabad. On satisfying himself that it was in order for the accused to have a pistol. Captain Kohil gave the permission asked for and instructed the Gunnery Officer to issue a revolver to the accused. He knew that it was in fact issued to him and the signature of accused was taken in the small Arms Register of the ship. Replying to a defence query, he said that the accused might have mentioned that he was going to Aurangabad, Ahmedabad or Ahmednagar.

Application by Defence counsel

The Sessions Judge of Bombay, Mr. R. B. Mehta, who heard the case against Commander K. M. Nanavati, rejected an application made by defence counsel, requesting the Court to direct the police to seize all the clothes of the accused lying at the place where he is now in custody.

Rejecting the defence application, the Judge remarked : "It is not the function of the Court to tell the police how to carry on investigation".

The defence application was made shortly after Mr. John Lobo, now Senior District Superintendent of Police, Ahmedabad, and a Deputy Commissioner of Police, Bombay, had told the Court that when the accused

came to make a report to him on April '27, the day of the alleged offence, he (Lobo) had not seen any clothes of the accused stained with blood nor had he seen them torn or cut.

On being recalled by the Court, he said that he had not given any specific directives to his juniors in the matter of taking charge of the clothes. If he had seen any blood stains on the clothes of the accused, he would have given such instructions. Had the clothes been torn or cut they would have attracted his attention. In that case also, he would have given such a directive. He did not notice any visible injury on the accused. During the seven or eight minutes the accused talked to him, he spoke coherently and in a normal manner.

In cross-examination, Mr. Lobo said that the accused was then wearing a half-sleeve shirt and a pair of white trousers. Within his knowledge, the accused was not sent to a doctor or to a hospital. In reply to a query of the Court, he said that when he stated that the accused talked coherently, it was not his impression but a fact that he had observed. To a query of the Chief Public Prosecutor, he said that the accused was in a "pensive mood" and perspiring a bit while walking into his room.

P. W. No. 17 :

Police Surgeon's Evidence :

The evidence of police Surgeon, in this case was of much importance, on which theory of struggle, the main point for defence was to be proved or disproved.

Dr. R. M. Jhala, Police Surgeon, who had performed a post-mortem on the body of Ahuja, described to the court, the external and internal injuries he had noticed on the body. The external injuries caused by a bullet which had glanced off the left side of the head, another on the chest and a third between the fingers of the left palm. The skull cap which was taken out for examination showed a "gutter fracture of the outer table and a fracture of the inner table". The brain showed haemorrhage on the left side.

In the opinion of the Police Surgeon, the victim died of "shock of internal haemorrhage due to injuries to the right and left lungs, fractured skull and intra-cranial

haemorrhage". The injury on the head was necessarily fatal, while the one on the chest, was sufficient in the ordinary course of events to cause death.

The viscera and the blood of the victim had been sent to the Chemical Analyser. Producing the Chemical Analyser's report, the Police Surgeon said that the contents of the stomach showed that the victim had consumed alcohol, but it was not enough to alter his behaviour. The alcohol must have been taken by the victim any time earlier than 20 minutes from the time of his death. He identified a spent bullet he had extracted from the back of the left shoulder-blade of the body.

The injury on the head, in his opinion, must have been the last and the other two (on the chest and on the fingers) must have been caused prior to the head injury. The head injury must have been inflicted with the back of the victim towards the assailant. If the bullet had gone further, it would have gone to a height of about seven feet.

The Police Surgeon said, that the injuries on the chest and the head must have been caused by the firing of a bullet from a distance of over 18 inches and those on the fingers from a distance of less than 18 inches from the mouth of the muzzle. The injuries on the left-hand fingers, the head and the chest could not have been caused during a scuffle in which the victim and the assailant were in each other's grip. The skull cap of the victim was produced by the Surgeon.

During cross-examination, Dr. Jhala said, that there was an average standard in which the majority of the people reacted to alcohol, but persons of different temperaments might react differently. His opinion was based on a passage from the book, "Homicide Investigation", by Snyder. The experiments on the basis of which Snyder came to his conclusions were carried out in America. The Chemical Analyser to the Government of Bombay had carried out experiments, but as he had got variable results they could not be published. In reply to a question he said, it was hazardous to estimate the degree of intoxication from the amount of alcohol consumed only, but blood concentration of alcohol would give reliable data.

Answering another question, the Police Surgeon said that a rebounding bullet could cause a gutter, similar to the one caused on the skull in the case, if it came from a similar direction. In such a case, it would not have the force to

fracture the inner table of the skull and cause intra-cranial haemorrhage. The striking velocity of a bullet depended on the distance travelled, the angle at which it struck and the medium against which it struck.

In the present case, the Police Surgeon said, the bullet injury on the chest of the victim must have been caused by the assailant standing on the right side of the victim and to the right of mid-plane.

Mr. B.R. Nadkarni, Registrar of the Sessions Court, said, in a statement that passes for entry to the Court, where the Ahuja murder case was being heard were issued only to press representatives and special jurors empanelled in the case and to no one else.

Dr. R. M. Jhala, Police Surgeon, stated before the Bombay Sessions Court during his cross-examination on next day that the bullet injuries on the head, chest and left-hand fingers of Prem Bhagawandas Ahuja did not indicate the possibility of a "struggle" for a possession of a weapon between the assailant and the victim. His evidence lasted over six hours.

Defence Counsel—Do you agree with the proposition of the injuries on the body, their nature and number, the condition of the bullets and the fact that only three bullets had been fired causing five injuries and that they were fired from a revolver indicated the possibility of a struggle between the assailant and victim over the weapon?

Police Surgeon—The head injury, being caused by a bullet fired from behind, rules out the possibility of a struggle. The three injuries on the fingers of the victim, which do not show burning or charring, can not usually be inflicted during a scuffle when the victim and assailant are in each other's grip. The injury on the chest, being free from any powder mark and with an indication of obliquity must have been inflicted from a distance beyond 18 inches to the right and in front. Unless, that position is postulated during the struggle, the chest injury is not likely to occur.

Replying to a question of the Judge, the Surgeon said that if a damaged bullet like the ones involved in the case hit a human body, the injury produced by it would differ in the shape of the wound and its depth from an injury caused by a bullet like the ones he had extracted from the body. He said that deformed bullets had poor penetrating power, If any damaged bullet, had hit the chest and caused an external injury the shape of the wound

would be different. A flattened bullet could not have caused the fracture of the skull on both the sides.

At the cross-examination the Surgeon said that once a bullet was deflected by its grazing any part of the body, the direction of deflection was unpredictable, when it entered the body after grazing.

Answering a number of questions on the nature of wounds caused by bullets fired from different distance, the Surgeon said that in a series of tests carried out on '38 bore revolver (as the one alleged to be used in the case), powder marks had been detected even upto 20 inches. But on an average, a distance of 18 inches was the accepted range. Carbonaceous tattooing or powder marks depended on the powder used, its composition, quantity and age (how old it was). Dr. Jhala did not entirely agree with the defence suggestion that the skin around a wound caused by a bullet shot from a range of 12 inches and over, did not, as a rule, show evidence of powder marks. Upto 18 inches, the wound from a fire-arm wound show evidence of powder marks.

The Police Surgeon said that it was not possible for the bullet injury on the chest to be inflicted from within 18 inches of the point of the muzzle. His opinion was based on the absence of carbonaceous tattooing and the significance attached to it by standard authors like Snyder, Taylot, and others.

Dr. Jhala said that the injuries at the back of the left-hand had all carbonaceous tattooing and, therefore the muzzle of the revolver would be at a distance of between six and 18 inches. During the post-mortem of the body, he noticed the disposition of the three injuries on the left-hand fingers in a straight line so evidently that he could clearly infer that they could have been caused by one bullet which passed out through the wound on the plamer aspect.

He admitted that the carbonaceous tattooing noticed on one of the finger injuries (No. 2) was not mentioned in the post-mortem report. Carbonaceous tattooing on the index finger extended upto the tattooed area of another injury on the middle finger (No. 5). Though it was continuing injury he had mentioned it separately for both the index and middle finger injuries. He denied the suggestion that he was giving false evidence in this respect. He admitted that carbonaceous tattooing was primary importance in a case of shooting and a specific mention of that was equally

necessary. He depended on his memory and not on any report to say that there was carbonaceous tattooing between the little and the middle fingers he agreed that it was an important omission in the post-mortem report.

Dr. Jhala ruled out the possibility of the bullet which caused the finger injuries inflicting the injuries on the head and the chest. If the bullet had first hit the fingers, it would get deflected, loss of gyration and would not be able to cause the injuries on the chest and the head. Another injury (No.6) of the body could be caused by the victim's back dashing against a hard blunt substance like the edge of a door, he said. A rebounded bullet could cause an injury similar to the one on the head of the victim, but without the fracture of the inner table and haemorrhage in the skull.

Dr. Jhala did not agree with the defence suggestion that the injuries on the chest and the head were of the category of those which were "likely to cause death". He said that the chest injury was "sufficient in the ordinary course of nature to cause death", while the head injury was necessarily fatal. Two questions on the diverse positions of the injuries caused by shooting at point-blank range and two other questions were disallowed by the Court on the ground that they were not to be put to a medical expert.

On being re-examined by the Chief Public Prosecutor, the Surgeon said that the rebounding of a bullet was not possible from a glass medium in direct firing. If a bullet hit a glass pane, it would create a hole and fall on the other side. If a rebounded bullet touched a glass medium, it would graze the glass, and fall down, but would not go on the other side.

Inspector Besil Kane of the Bombay C. I. D. who made a search of Commander Nanavati's residence in the Colaba Military area on April 27, the day of the alleged offence, said that he had seized a Christmas greeting card signed by "Mamie and Prem (Ahuja)" and Mrs. Nanavati's diary for 1959. He also took charge of four cinema ticket counterfoils under a panchanama. The panch who was present during the search was also examined.

Sub-Inspector Surve, of the Arm-police, said that no licence for arm and ammunition had been issued the name of Prem Ahuja or Miss. Ahuja.

NANAVATI'S STATEMENT

Giving his Statement Commander Nanavati totally denied the charge that he had intentionally killed Prem Ahuja. He took the plea of *accident* which happened due to the struggle for the possession of revolver. He accepted most of the allegations and facts of the story as was told by the prosecution, except the intention to cause death of Prem Ahuja.

"There was a struggle for a revolver during which some shots went off. If I had intended to kill the deceased (Ahuja) I would have riddled him with bullets as he was standing in front of the Dressing table" he said.

Commander Nanavati said in reply to a query of the Judge that his statement had been correctly recorded by the lower court. The statement which was signed by him was read over the jury.

The Judge, Mr. Mehta, asked the accused if he wished to say anything in regard to the evidence which the prosecution had led in the case. The Judge told him that he was not bound to make any statement. But, if he wished to make any statement, the Court and the jury might draw such inferences as they might think fit and proper. Commander Nanavati replied : "I do not wish to make any statement".

The court—It is alleged in evidence against you that on April 27, 1959 at about 3-30 p. m. you requested witness Capt. Kohil, Commanding Officer, to give you a service revolver and thereafter, on the same day at 3-50 p.m. Master Gunner Ahmed Ibrahim gave you a revolver with six live cartridges of 0.38 bore and that you signed the entry in the register. Do you wish to say anything in regard to this allegation ?

The accused—I do not wish to say anything in regard to this allegation.

The court—It is alleged in evidence against you that thereafter at about 4 p.m. you went to the office of the deceased, Prem Bhagawandas Ahuja, at the Universal Motors at Pedder Road, and inquired of witness Taneja whether Ahuja was in the office, to which Taneja said that he had gone for lunch. When you asked Taneja when Ahuja would come back he said that he was not sure. He further asked you if there was any message for Ahuja, when you said, "No, thanks" and left. Do you wish to say anything in regard to this allegation ?

"No", said the accused.

The court : It is alleged in evidence against you that thereafter at about 4-30 p.m. you went to "Jeevan Jyot" at the residence of Ahuja and rang the doorbell. On the door being opened by witness Anjani, you asked him whether Ahuja was in and on Anjani saying "Yes" you walked in and opened the door of the bedroom of Ahuja saying "Prem" and rushed inside, closing the door behind you. Do you wish to say anything regard to this allegations ?

"No", said the accused.

The court : It is alleged in evidence against you that when you entered the bedroom you had in your hand a brown envelope in which, it is alleged, you had kept the said revolver loaded with six cartridges and that when you entered the bedroom Ahuja had a towel wrapped round his waist and was combing his hair at the dressing table in the bedroom which is adjacent to the bath-room door. Do you wish to say anything in regard this allegation ?

"No", said the accused.

The court : It is alleged in evidence against you that after entering the bedroom you fired three shots from the revolver and killed Ahuja in his bath-room. Do you wish to say anything in regard to this allegation ?

The accused : It is not true that I killed Ahuja intentionally. There was a struggle for the revolver during which some shots went off. If I had intended to kill Ahuja I would have riddled him with bullets as he was standing in front of the dressing-table.

The court : It is alleged in evidence against you that on hearing the noise of the shots and the breaking of the glass of the window pane in the bath-room, witnesses Anjani and Miss. Ahuja rushed into the bedroom. At that time you were standing between the bath-room door and the bedroom door with a revolver when Miss. Ahuja asked you, "What is this" ? Do you wish to say anything in regard to this allegation ?

The accused : It is not totally correct. I was standing very close to the bedroom door and almost on the point of opening it when the door opened and Miss. Ahuja rushed in. I cannot remember anything having been said. I went past her and went straight out.

The court : It is alleged in evidence against you that

thereupon you pointed revolver at witness Anjani saying that no one should come in your way otherwise : he would be shot at and saying this, you went out of the flat. Do you wish to say anything in regard to this allegation ?

The accused : I did not say anything at all to any body. I am not aware if at the time I came out of the bedroom my revolver was pointing at anybody.

The court : It is alleged in evidence against you that thereafter you got into your car which was parked down below and when your car came to the gate after taking a turn, witness Puran Singh asked you to stop till the police arrived and Anjani stood in front of your car. Do you wish to say anything in regard to this allegation ?

The accused : As far as I can remember I drove round the drive out on to the road and at the first gate I slowed the car down because some people were shouting loudly something about the police. I therefore shouted back that I was myself going to report to the police. I then drove away.

The court : It is alleged in evidence against you that at this time Puran Singh asked you why you had killed Ahuja, when you said that you had a quarrel with him and as he had connection with your wife you had killed him. Do you wish to say anything in regard to this allegation ?

The accused : It is utterly ridiculous that I will stop and discuss with a watchman my own intimate domestic affairs-a watchman, whom I did not know at all.

The court : It is alleged in evidence against you that Puran Singh asked you to stop till the police arrived when you said you would go to the police station. You also told Puran Singh that he might accompany you if he so wished and thereafter you drove away. Do you wish to say anything in regard to this allegation ?

The accused : This also is totally false.

The court : It is alleged in evidence against you that thereafter you drove to Government House (Raj Bhavan) Lower Gate and asked a constable where the nearest police station was, to which he said it was Gamdevi. Then you asked him to accompany you which he did not. But he pointed out the way to the Gamdevi police station "via" Chowpatty Road and Bharatiya Vidya Bhavan. Do you wish to say anything in regard to this allegation ?

The accused : It is correct. He did not explain to my satisfaction how I should reach the Gamdevi police station,

I therefore requested him to accompany me. But as he could not leave his post, I drove away.

The court : It is alleged in evidence against you that thereafter you went to Commander Samuel at about 4.45 p.m. and told him that something terrible had happened and that you did not quite know, but you thought you had shot a man, as he had seduced your wife which you could not stand. On the advice of Commander Samuel, you went to the Deputy Commissioner of Police. Mr. Lobo at the C. I. D. office. Do you wish to say anything in regard to this allegation ?

The accused : This is correct.

Closing the case for the prosecution, the Chief Public Prosecutor, told the Court that Mrs. Sylvia Nanavati was not a necessary witness for the prosecution. He did not wish to rely on her evidence. The evidence of Toti Sunderrao, a servant of Ahuja, was also not necessary for the prosecution.

This led to a heated exchange of words between counsel for the prosecution and the defence. Mr. Khandalawala said that when Mr. Trivedi opened the case, he had told the jury about the entire conversation between the accused and his wife. He alleged that there was an "oblique motive"—to withhold an important witness in order to avoid cross-examination.

Prosecution—It is not a trial for adultery, but one for murder. She has been under the influence of the accused and she is still under the influence of the accused, living with his parents.

The Defence counsel—Then, why did you open the case with her ?

The defence counsel insisted that the Court should ask the prosecution to call Mrs. Nanavati as a prosecution witness. She was a material witness to unfold the whole story.

Giving his decision on the point the Judge said that if in the discretion of the Public Prosecutor he felt that a particular witness was not one on whom the prosecution could put any reliance, then, it was not obligatory on the part of the prosecution to examine that witness. All that the prosecution was bound to do in such circumstances was to keep such a witness available for defence and leave it for the defence to examine, if it so chose. On that ground alone, the Judge said, he did not think he could ask

the prosecution to examine the witness as Mr. Khandalwala desired to do.

For the purpose of this application, the Judge had gone through the statements made by the witness to the police. In his view, Mrs. Nanavati was not a witness who was necessary to be examined for unfolding the essential story of the prosecution case. The Judge also held that Toti Sunderrao was equally not a necessary witness. The Judge cited various authorities in support of his decision.

Madhukar Sadashiv Sawani, a tram conductor, who acted as a panch at the time of the police taking charge of the body of Ahuja and various articles from the room of the deceased, identified the articles seized by the police. Mohomedali Peerbhoy, who was a panch when the police took charge of the revolver from the car. of the accused at the C.I.D. office on the day of the offence, said that the accused produced a pistol three live cartridges and three empty cases from his car parked near the C.I.D. office. He also stated that the accused had made a statement to the police in English in the presence of panchas.

Inspector P. L. Mokashi of the Bombay C.I.D. the investigating officer, said that on being summoned by Deputy Commissioner Lobo, he and Superintendent Korde went together to the office of Mr. Lobo on the evening of April 27, 1959. They found the accused sitting there.

Inspector Mokashi said he was directed by Mr. Lobo to record the statement of the accused, arrest him and investigate the offence further, bringing the accused to his office he and Superintendent Korde searched the accused, but found no marks of pistol injuries or blood stains on his person or his clothes. He was wearing a white half-sleeved shirt and a pair of whitish trousers. He recorded the statement of the accused in the presence of panchas. The accused signed the statement after correcting it.

The Inspector took charge of a revolver. three live cartridges and three empty cases produced by the accused from his car. The accused was already under arrest, he said. At 5.55 p.m. Inspector Mokashi left for the scene of the offence with Lt. Om-Prakash of the Indian Navy who had arrived by that time in his office. Deputy Inspector Gautam was already there with other officers and was drawing up the panchnama. He assisted them in the work. He later arranged for the removal of the body to

the Coroner's Court. Subsequently, he recorded the statements of Anjani Rapa at the flat and the statements of Puran Singh, the watchman, and Sub-Inspector Phansalkar at the Gamdevi police station.

As he found some letters during the search of the bedroom of the deceased, he telephoned to Sub-Inspector Wagle and Inspector Kanet to search the residence of the accused and Mrs. Nanavati. The panchnama of the search of the residence of the accused was handed over to him at the C.I.D. office along with the documents seized. When he reached the C.I.D. office at 11.30 p.m. he found the parents of the accused waiting for an interview with the accused. He granted an interview in his presence. Under instructions from his superiors, Inspector Mokashi granted facilities to the accused for changing clothes and obtaining a bedding for the night. The accused was kept in a separate room.

He could not record the statement of Commander Samuel, Sampath and Miss. Ahuja the same day. He also learned that the statement of Mrs. Nanavati was not recorded that night. Prior to the production of the accused before the Magistrate, the accused was granted an interview with his lawyer. The accused was remanded to police custody. On April 30, according to the orders of the Court, he was transferred to naval custody.

Inspector Mokashi recorded the statement of Mrs. Nanavati, on April 28, as also of Miss. Ahuja, Deepak Sampath and Sunderrao, Sub-Inspector Sait, who attended the post-mortem, produced a spent bullet extracted from the body. He then sent the revolver, the live cartridges and the spent bullets with Sub-Inspector Ranganekar to the ballistic expert at Nagpur. He also forwarded a list of injuries and some photographs to the expert later by post.

He recorded the statement of capt. Samuel on April 29, on I.N.S. Kunjali, and the statement of Capt. Koshi on I.N.S. Mysore. He recorded a further statement of the accused the same day. On May 2, the statements of Constable Desai, Mr. Taneja and Lt. Commander Yagnik were recorded. The statement of Mr. Lobo was recorded on June 15. The Inspector also recorded the statement of Dy. Inspector Gautam on May 11 and his own on June 15. The report of the ballistic expert was subsequently received. The charge-sheet was subimitted on May 28, 1959.

Inspector Mokashi, who also searched the remaining portion of the house, did not find any rebounding bullet marks either in the bedroom or in the bath-room. The liquor permit of Ahuja was produced by his step-brother, Mr. Nanda Ahuja, on May, 3.

Cross-examined by defence counsel, Inspector Mokashi said that there was no record that he had granted an interview to the parents with the accused on April 27 night or they visited the C. I. D. office on that day. The parents of the accused had brought clothes and a bedding for the accused. He had orally reported the matter to his superiors next morning. An inquiry regarding the facilities granted to the accused was made by some naval authorities on telephone to his superiors. A similar inquiry was made by Commander Vatcha of the Navy on April 28. When the accused was taken to the car after the remand, he saw some photographers trying to take a photograph of the accused. He had seen a photo of the accused appearing in the press, the next day.

Inspector Mokashi said that to his knowledge the clothes, the accused wore on April 27 when he came to the C.I.D. office had not been taken charge by the police. He denied the suggestion that his evidence that the parents of the accused came to the office of the C.I.D. and gave clothes to him that night was a deliberate falsehood. These facilities were given to the accused. Despite that a complaint was made at the remand time that conditions in the police look-up were unhygienic and there were no facilities for sleeping. Mr. S. R. Vakil, an advocate, was granted an interview with the accused before and after the remand. Shown a pair of dark-coloured pants and a full sleeved shirt, Inspector, Mokashi said that these "were certainly not" the clothes the accused was wearing on April 27. He might have worn these when taken for remand. He did not mention in the panchnama the search of the remaining portion of the flat or the absence of any rebounding marks of bullet as it was not necessary to record negative facts. Inspector Mokashi denied the defence suggestion that he had invented the story of searching for rebounding marks after the cross-examination of the ballistic expert.

As the hearing was in progress at noon, a woman fainted in the Court room. She was immediately given water and helped out of the Court room.

Commander K. Nanavati, of I.N.S., Mysore, accused in

the Ahuja murder case, was further cross-examined at the resumed hearing of the case in the Bombay Sessions Court.

The questions in cross-examination by the public Prosecutor related mostly to the struggle alleged by the defence, to have taken place between Commander Nanavati and the deceased Ahuja after the accused entered Ahuja's bedroom on the day of the incident.

When the prosecutor completed his cross-examination there was shouts and the Sessions Judge, Mr. R. B. Mehta, ordered that part of the court, wherefrom the cries were heard, be cleared. The Judge further ordered, only those concerned with the case would be allowed to be present in Court.

Replying to questions, Commander Nanavati stated that on April 27, (1959) when he went to Ahuja's flat, there was nothing social or friendly in the visit. He went there with the intention of finding whether Ahuja was prepared to take the honourable course, in the sense whether he was going to marry Sylvia (accused's wife) and look after the children. If Ahuja declined to do so, then the accused had the intention possibly of thrashing Ahuja.

Commander Nanavati said he did not consider what would have been the consequences of thrashing Ahuja in case he gave a negative answer, but he had no intention of killing Ahuja. If Ahuja had refused to take "the honourable course" and the accused had thrashed him, then there was no question of the accused putting an end to his own life. He added : "I would have stood by my wife if she wished to remain with me because she has always been a devoted wife until this man (Ahuja) had his sinister evil hold on her. I am quite convinced in my mind that he had some sinister evil hold on her."

If Ahuja had agreed to take "the honourable course", Commander Nanavati was prepared to give his wife freedom and he would most probably have put an end to his (accused's) life by shooting himself. The question of divorce therefore did not enter his mind.

Commander Nanavati said he did not go to Ahuja's flat to persuade the latter, but had gone there only to ask Ahuja as to what his (Ahuja's) intentions were regarding the family of the accused. On April 27, 1959 after he had discussion with his wife, all sorts of thoughts passed into his mind.

He carried revolver to Ahuja's flat, the accused said,

because his wife had told him that Ahuja might shoot him (accused). The impulse to go and see Ahuja occurred much later than he had drawn the revolver, and so he could not connect his drawing of the revolver with taking it to Ahuja's residence. The reason why he took the revolver was for self-protection as his wife had told him that Ahuja might shoot him.

If by chance, Ahuja had attempted to use his (Ahuja's) revolver, in such a case, Commander Nanavati said, he would have used his revolver for self-protection.

He could not say whether he rushed into the bedroom. He could neither say whether he was perfectly composed or not, because he was in a shock and dazed. When he entered the bedroom, he told Ahuja "you are a filthy swine" in more or less the same tone he was saying it in the court.

The revolver was removed from the envelope after Ahuja made an attempt to grab it. The accused grabbed it to prevent it from getting into Ahuja's hands. At that time he whipped out the revolver. The whole struggle for the revolver took place in the bath-room. He did not remember the exact detail about pushing Ahuja into the bath-room because it (the incident) was all sudden and unexpected.

The revolver was not an automatic weapon and the trigger would have to be pulled for firing each time. All the time, his finger was on the trigger, the accused said. When the deceased slumped, he had an impression something very serious had happened and his only thought was to go and report to the police.

Both the shots which he heard, the accused said were in the bath-room, while he and Ahuja were in the bath-room. He did not stop to tell Miss Ahuja of what had happened because his only thought was to go to the police and report. The accused did not remember if the watchman of Jeevan Jyot had any conversation with him. Puran Singh, the watchman, might be one of the persons shouting "police" while in the compound.

He could not say how long he was in the bath-room. From the moment he entered the bed room till he left the bedroom, it might be between half minute and one minute. The struggle started at the bath-room door when Commander Nanavati banged the deceased towards the bath room door and again pushed him into the bath-room. All the time the deceased had a grip on the accused's wrist.

He had not noticed any blood stains on his clothes and he did not offer his clothes to the police. From the day of the incident he had been suspended from service, but he was required to wear the naval uniform in the court by the provost Marshal.

He had no impression from where and how the shots were fired.

Prosecutor : You acted like a man who came to kill and having killed (Ahuja) you left.

Accused : It is an unfair allegation and it is not true.

The accused added that he knew that it was not deliberate shooting, but he was not aware of what had happened. He did not give any thought to matter (whether it was an accident) because he wished to go straight to the police and report. He must have known before he left the bath-room that it was not deliberate shooting. If he had not been in that state of shock, he would have explained to the inmates of the flat of what had happened.

After the struggle, he was just shocked. He did not think that he was then either in anger or in excitement in the struggle, the deceased had a grip on his wrist with one hand only. He did not know what Ahuja was doing with his other hand. During the struggle they were always face to face. The accused could not say how close they were to one another. They might have been very close or they might have been at arm's length, but they did not fall down. They might have crouched some time during the struggle.

He was holding the revolver in his hand with the finger on the trigger in the usual position of firing. Describing the struggle, the accused stated that Ahuja continued hanging on him after the first shot went off, meaning that Ahuja did not release his grip on the accused's wrist.

Court : Was there any assault on you by the deceased ?

Answer : I do not remember having any blows from the deceased by his free hand during the struggle, but he might have hit me.

D. W No. 2 :

Admiral Katari's Evidence :

In criminal proceeding conduct and character of the accused is always in issue, the character of commander Nana-vati which naturally was in issue in the criminal proceeding was duly certified and praised by Admiral R. D. Katari, the

Chief of the Naval staff, his excellent past service record and good moral character was one of the admitted fact which even impressed the Sessions Judge. The evidence of Admiral Katari Defence witness No.2 was most interesting.

The chief of Naval staff, Admiral Ramdas Katari, examined by defence counsel, said he knew Commander Nanavati and Commander Samuel (Provost Marshal). Commander Samuel was not in any way subordinate to Commander Nanavati, and the promotion advancement or welfare of the provost marshal did not depend in any way on Commander Nanavati. The provost branch in the Navy had to maintain discipline in the service.

Commander Nanavati had served directly under Admiral Katari on three occasions, first in 1946 when witness was commanding I. N. S. Cauveri, then in 1951 when he was one of the principal officers at the Naval headquarters in Delhi, and the third in 1957-58 when Admiral Katari was flag officer commanding the Indian fleet flying his flag on "Mysore" and Commander Nanavati was the executive officer of the ship.

Commander Nanavati was honest and sober, efficient and a man of character. It had not come to the knowledge of witness that Commander Nanavati was ever rash or reckless. He had always found Commander Nanavati very calm and collective.

In cross-examination, Admiral Katari stated that besides in service he had also met Commander Nanavati socially and in his experience, he had not heard that Commander Nanavati was concerned in any brawl. The Commander had been suspended, the Naval headquarters having issued order with the concurrence of the Government of India. The reason for suspension was that it was reported that Commander Nanavati was charged with the murder of a man.

The application for naval custody of Commander Nanavati was presented on behalf of the witness by the Naval headquarters. Although under suspension, Commander Nanavati continued to be a Naval officer. Witness had not issued any order, in regard to the dress which Commander Nanavati was to wear (while appearing before the court). There was no rule debarring him from wearing uniform.

Some time before the trial, he was asked whether he would testify to the character of Commander Nanavati

and witness had stated that he would do so and it was his duty to do so.

D. W. No. 3.

Dr. Baliga's Evidence :

The different opinion regarding the nature of the wound, their causes and possibility of gun firing and the distance between the mouth of the revolver and the wound made the case so complicated that Dr. Baliga was further cross-examined. The Evidence of Dr. Baliga, a defence witness No. 3, suggested the inference of struggle for the revolver and accidentally going off of the bullets.

Dr. A. V. Baliga, a prominent Surgeon and a defence witness in the trial of Commander K. M. Nanavati, was further cross-examined as regards the wounds on the body of Ahuja and the possible distance between the mouth of the revolver muzzle and the wounds which were caused by the shots going off from the revolver.

Passages from books by various authors on this subject such as *Glaister*, *Sydner Smith*, *Sydner* and *Gonzales* were read out to witness who agreed with the propositions mentioned therein. Dr. Baliga said that he had no practical experience that after a distance of 12 inches, no powder marks could be discovered as a rule. He did not see any contradiction in all the authorities cited and they had referred to the fact that it was possible to get powder marks beyond a range of 12 inches and upto 18 inches.

The only difference between black powder and smokeless powder (in the cartridges) was that the latter when present in a wound was detected with greater difficulty. He did not know whether there was any other difference. Witness added that his statement was made with special reference to the blackening and tattooing marks as mentioned in the post-mortem notes. Witness further stated that he was not a ballistic expert.

Dr. Baliga said, he had no experience of the distance to which the various types of powders used in cartridges would be projected from a revolver when fired. Witness also did not know what type of smokeless powder in the cartridges was used in the present case.

Witness could not say to what distance the powder deposits from the live rounds (exhibited in the case) would

be projected and also what would be their circle spread with their density. He could not accurately say the distance to which powder marks from the cartridges (in the case) could be projected.

Prosecutor : With no experience of the distance at which tattooing or blackening would be found by firing cartridges of different sorts from different revolvers, or of not having any medico-legal experience on such firing, you have still come to give a sort of formal approval and your own certificate on an opinion of one authority namely, Glaister, with a view to simple support a sort of theory profounded by the accused.

Dr. Baliga replied in the negative and added that all the authorities and citations made that morning in the court did not contradict the general rule of Glaister of 12 inches. Further he was not a ballistic expert.

Prosecutor : So it comes to this, that you have become an authority over an authority with no experience of the subject at all.

Dr. Baliga said that he had not stated that he was an authority over an authority. All that he had stated that the authority of the statement in Glaister's book had not been challenged. Glaister had not postulated the absence of powder marks beyond a range of 12 inches.

Dr. Baliga did not agree that the injuries in the fingers of the left hand of Ahuja were in a straight line. His opinion was that they were in a circuitous line as he had stated in his examination-in-chief. He said that they were more circuitous and in giving the answer that they were circuitous, he had taken into account also the exit of the Palmer aspect.

With the injury on the joint of the index finger and injury on the knuckle of the middle finger and the injury on the web between the little finger and the ring finger, but not taking into account the injury on the Palmer aspect, they were in a straight line.

Dr. Baliga was asked which injury would make the injured person slump. The witness said that either the injury in the chest or the injury in the head could lead to it. "But I cannot say which is more likely to cause him slump. But both are likely to cause him to slump".

The prosecutor then asked the witness which injury in his opinion would make the victim slump quicker. The question was however disallowed by the court.

Prosecutor : After receiving the injury on the chest will the victim (Ahuja) be in a position to continue his struggle at all ?

Dr. Baliga : Yes, he can do.

Prosecutor : After receiving both the injuries, can he still carry on the struggle ?

Witness : It is unlikely. I would not say impossible but I would say improbable.

Replying to the court, Dr. Baliga said that he was unable to say whether the revolver in the case was a high velocity or low velocity weapon.

Judge : The gutter wound indicates a narrow angle, of striking the head.

Dr. Baliga : I will not accept the narrow angle, but I would say that there is a limited area of surface on which the force would work. When a bullet was discharged from the revolver, it went with its nose forward, but he did not know how long the nose would continue to remain forward. He also did not know the weight of the different parts of the bullet.

Dr. Baliga's cross-examination lasted for six and half hours.

Dr. Baliga told the Sessions Court that he did not agree with the opinion (expressed previously by another medical witness) that the injuries to the head and chest of Prem Ahuja could not be caused during a grip between the deceased and the assailant.

Witness explained that by grip he meant a grip of the forearm including the wrist and added that one did not ordinarily visualise an embrace in a struggle.

Nanavati had pleaded not guilty and said that there was a struggle over the revolver during which his impression was that two shots went off.

Replying to defence counsel, Dr. Baliga said that the injury on the head and the injury on the chest of Ahuja was *sufficient in the ordinary course of nature to cause death*. He would not agree with the opinion (given by the police Surgeon earlier) that with injury on the head the victim would not be able to keep standing and would drop down unconscious immediately.

Shown a damaged bullet which was found in the bath-room and which had a jagged edge, Dr. Baliga was asked to state whether it was possible, if the injury was back to front on the skull from a rebound and whether that injury

could be caused by that jagged edge. Witness replied in the affirmative. He added that the damaged bullet (rebound bullet from back to front) could cause a gutter fracture on the head. He was saying this after examining the gutter fracture on the skull vis-a-vis the projection on the torn bullet.

Regarding the injuries on the fingers of Ahuja, witness said that since there was carbonaceous tattooing in the index and the middle finger of the left hand, it would indicate that the middle mouth of the muzzle of the revolver would be within 18 inches of the injuries Nos. 4 and 5. He added that the distance would be between 6 and 18 inches.

Dr. Baliga agreed that the position of the five injuries (on Ahuja's body), their nature and the condition of the bullets, and the fact that only three bullets were fired from a revolver, indicated the probability of a struggle between the assailant who held the revolver and the deceased over the weapon. In this connection, witness said that he disagreed with the opinion previously expressed by another doctor and the reasons given by that doctor.

In cross-examination, Dr. Baliga said that he was not a medico-legal expert but a surgeon attached to a general hospital that admitted and treated medical-legal cases. "I naturally have my own experience and I am called upon also to give evidence on the nature of injuries".

He had treated bullet injuries during the disturbances in Bombay and those might be a dozen cases. Dr. Baliga also said that he might have performed about half a dozen post-mortems, but they had no medico-legal significance. He did them for the sake of knowledge.

Dr. Baliga said he was first consulted about the case a week ago. There were two conferences with the defence lawyers and at these conferences he discussed the points at issue in this case

Prosecutor : You were asked from the Post-mortem report whether the injuries could be due to a struggle ?

Dr. Baliga : I have given many opinion on those lines.

In reply to further questions, Dr. Baliga said that when he gave his opinion, it was based on the photograph of the skull which was shown to him. He agreed with the prosecutor that the photograph shown, did not give the depth of the gutter fracture. He did not give his opinion for the first time with regard to the skull injury. He only said that the injuries could be in the course of a struggle.

Dr. Baliga said that he had first given the opinion that the gutter fracture could be "before-backward", but later on when he saw the photograph of the skull exhibited during the case, he said it was more likely it was forward-before, but I do not exclude any other way also.

In further cross-examination, Dr. Baliga stated that the damage caused by bullet at the initial point of contact would be more than at a subsequent point of contact, but he did not agree to the suggestion that the wound at the initial point of contact must be wider and not narrower than at the flying end.

He had no authority to support his statement but explained that it would depend upon the contour of the surface of contact.

From the photograph placed before him, he could not have an idea of the contour of the skull, but he could say that knowing the exact locality of the skull where the contact was, and knowing anatomically the contour of that part of the skull, in his opinion, it was necessary that the point of impact the wound was necessarily wider.

In the present case, Dr. Baliga did not agree that the fracture of the inner table showed that the initial impact was from behind. He agreed that there was fracture of the inner table, but said that the extensive part of the fracture was beyond the front end of the gutter than the rear end of the gutter.

Witness then was asked to distinguish the three classes of injuries, namely, necessarily fatal, would cause death in the ordinary course of events, and likely to cause death.

He said that in a case which was necessarily fatal, the general condition would be a condition of deep shock with evidence of injury of severe nature all over an extensive area. Even with help it would not be possible to save the life.

If there was availability of medical treatment and there was the possibility of saving life, such a case he would call as *sufficient in the ordinary course of nature to cause death.*

By the phrase '*likely to cause death*' he meant that if one, in all probability left alone to nature, would be expected to recover, but much more so in the absence of complications and medical help available. Explaining further, Dr. Baliga said that in such a case there was less severe injury and less depth of shock.

Prosecutor : How would you classify a case of injuries causing almost instantaneous death where medical aid could not be made available ? Whether such a case was necessarily fatal or sufficient in the ordinary course of nature to cause death ?

Dr. Baliga : If a person who received an injury and if he instantaneously meets with death, to say in a couple of minutes, and no medical aid is available, I would classify it as necessarily fatal.

Prosecutor : Supposing a man who received injury No. 1 (in the chest) causing internal injury including a through and through wound on the lower tube of the left lung and contusion in both the lungs, and is left without treatment or skilful medical assistance.

Witness : Chances of recovery are good with medical help.

Prosecutor : Without medical help ?

Witness : Still there are chances of recovery.

Prosecutor : What would be the percentage ?

Witness : About ten percent.

Dr. Baliga added that there were many instances like injury No. 1 where recovery had occurred with expert medical help available. He then said that he would put the percentage at 20, and added he would not call injury No. 1 *sufficient in the ordinary course of nature to cause death*

Mr. Mehta, Judge : Therefore you will be surprised if a man with such an injury dies.

Witness : Yes,

To further questions, Dr. Baliga said that with medical help the chances of recovery in cases like injury No. 1 would be 80 to 90 percent. However, he would not say that injury No. 1 was *not likely to cause death*.

Dr. Baliga's evidence had created a problem before the Judge and Jury to decide and ascertain whether actually struggle took place or not. This practice is very rare when two medical evidences are produced.

D. W. No. 4.

J. D. Cooper's Evidence :

Lt. Commander Cooper in his examination in chief by the defence counsel said that on April 27 last (the day of incident) Capt. Kohli told him that Commander Nanavati had

approached him for the loan of a service revolver from the ship (I.N.S. Mysore) as he required it for protection on a road journey. A revolver was issued after an entry was made in the ship's log book.

Lt. Commander Cooper said that on the day in question Nanavati was wearing a fawn coloured shirt and a pair of dark coloured trousers.

The witness was shown the clothes that had been exhibited. He replied that the clothes the accused was wearing on April 27, were of about the same colours as the clothes shown to him.

The prosecutor reserved the cross-examination of the witness.

The defence counsel at this stage wanted to produce two documents through two witnesses. The Judge disallowed the production of one of the documents saying that it was not relevant to the case. When the defence counsel sought to produce the other document, the prosecutor objected and suggested that arguments about the propriety otherwise of producing this document be held not in the presence of jury. The Judge thereupon asked the jury to leave the court room. Subsequently the production of this document was also disallowed by the judge.

D. W. No. 5.

Commander Nanda's Evidence

In support of the plea of *accident* and *struggle* and show the circumstances that Nanavati had no intention to kill Ahuja, Mr. Nanda told the court that Commander Nanavati was a very good shot.

Commander Sardarlal, M. Nanda Director-General of the Naval Dock-yard Expansion Scheme, who was the next defence witness, testified that Nanavati was a very good shot. Nanavati, he said, was a good shot at both moving and stationery targets.

The defence counsel : Have you ever seen him shooting with a '38 revolver at fixed targets on INS, Mysore?

The witness replied in the affirmative and said that during practices at fixed targets, Nanavati was able to get practically all the shots within a radius of six inches. The distance of targets in such practices was 20 feet. Cross-examined Commander Nanda said to his information during the initial training, Officer trainees were given instructions

that when they were not to use their revolver the finger must be kept to the trigger guard and not on the trigger. He would not call it an instruction of great importance nor a trifling instruction. He would call it a part of normal instructions.

Asked if this was the first safety regulation, the witness Commander said that he did not think that he would be able to say that was the first safety regulation. It was safety-training.

In reply to a question by the court, the witness agreed that a good shot must be able to anticipate the movement and the position of a moving target where the projectile would meet the target.

D. W. No. 6 :

Sylvia's Evidence :

Clad in pure white, in Indian style, 28-year-old Sylvia Nanavati, English wife of Commander Nanavati, gave her evidence for the defence in the Bombay Sessions Court, in clear low tones, which had a touch of sadness at times and told the court "I was infatuated with Ahuja".

Sylvia Nanavati's evidence was eagerly awaited by the parties as well as the public because it was she from whom some extraordinary story was expected. She was refused by the prosecutor to be called as a prosecution witness as prosecution did not place any reliance on her.

Examined by the defence counsel, Mrs. Nanavati said that she was married to Commander in July, 1949 and had three children, aged $9\frac{1}{2}$, $5\frac{1}{2}$ and 3. She came to know Prem Ahuja three years ago. Before she knew Ahuja, her married life was perfectly happy. Her friendship with Ahuja resulted in intimacy with him, roughly speaking about the beginning of 1958.

Mrs. Nanavati did not disclose this intimacy with Ahuja to her husband till April 27 last (1959). Describing her activities on that day, witness stated that in the morning, she and her husband went to the veterinary hospital at Parel, and on the way back to their residence at Colaba, she purchased from Metro Cinema one ticket for herself and three tickets for three children. Then she did shopping at Crawford Market and returned home at 12-30 p.m.

Before lunch, they were sitting in the sitting room when Commander Nanavati came and touched her. Witness asked him not to do so because she did not like him.

Defence counsel : Why did you not like him (husband) ?

Mrs. Nanavati : At that time I was infatuated with Ahuja.

Witness, continuing, said that Commander Nanavati asked her why she was so cold and why she did not like him. She replied that she did not want to talk about the matter.

After lunch Commander Nanavati went to lie down in the bedroom and witness was in the sitting room. After a time her husband came out and told her that they must talk this matter out. He further said that for the last few months "you have been cool to me". He also asked for the reason, and said, "Don't you love me".

Witness did not give any reply. Commander Nanavati then asked her whether she was in love with anyone else, and she said yes. He then wanted to know who the other person was, but witness said nothing.

Witness continued : When he asked me whether it was Ahuja and I said yes. He asked me whether I had been faithful to him. I told him that I had not been faithful to him.

Commander Nanavati just sat dazed. Suddenly he got up rather excitedly and said that he wanted to go to Ahuja's flat and square things up. Witness became alarmed and put her hand to her husband and said, "Please don't go there, he was to shoot you."

Commander Nanavati said : "Don't bother about myself. It does not matter, and in any case I will shoot myself".

Witness then caught hold of his arm and tried to calm him down. She told her husband "Why should you shoot yourself. You are innocent one in this."

After this, witness said, her husband cooled down a bit and asked her whether Ahuja was willing to marry her and look after the children. She avoided answering that question, because she was too ashamed to admit that she had felt that Ahuja was trying to avoid marrying her. Thereupon her husband told her that he was prepared to forgive her if she promised never to see Ahuja again. But witness hesitated to give an answer.

Counsel : Why did you hesitate to give an answer ?

Witness : I was still infatuated with Ahuja, so I hesitated to give the answer. As this was question, which affected my whole future, I could not give an answer at the moment.

Continuing, witness stated that in the meantime, the doorbell rang and the neighbour's child came in for going to the Cinema. Then they got ready for the cinema show and her husband said that they should not talk about it any more and that they would talk about it the next morning.

Witness went to the cinema with three children, her husband driving the car. Though she requested Commander Nanavati to go with her for the show, he did not go, but just took them to the cinema. Counter foils of the tickets, which were taken charge of by the police were then tendered.

After leaving them at the theatre, her husband told her that he was going to the ship, I. N. S. Mysore, to get some medicine for the dogs.

Witness identified a silk shirt and coloured pants as having been worn by Commander Nanavati at the time her husband told her that he would return and pick them up at the cinema, the show ending at 5-30 p. m.

When she came out of the cinema she did not find her husband, but she was picked up by a relative of her husband. When she reached home, she came to know as the incident in the case, Her husband had taken the keys of their flat.

Mrs. Nanavati knew the residence of Ahuja, and she had frequently visited that place. Her husband had visited Ahuja's flat on two or three occasions when she was with him. She had visited Ahuja's flat alone frequently. She knew Miss. Ahuja. Both Ahuja and herself told Miss Ahuja of the intimacy between Ahuja and witness. This was about October or November, 1958.

Witness told Miss Ahuja that she would say that she was visiting the flat as Miss. Ahuja had a headache, if any question, arose, and Miss Ahuja was agreeable to this.

In January 1959, she had gone to Delhi. Miss Ahuja had also gone there. Mr. Ahuja was there at that time, staying in Asoka hotel. At the end of January, witness, Ahuja and Miss. Ahuja returned to Bombay on the way they stopped at Agra.

She knew that Ahuja was keeping liquor bottles in his flat. She had attended parties when Ahuja was alive and Miss Ahuja was quite frequently present at those parties.

The deceased used to drink liquor. She also identified a photo of Ahuja.

The Judge remarked that in the absence of the photographer, who took the photo was put in only for the purpose of showing the fact that the photo was found in the flat of Ahuja.

Mrs. Nanavati identified another photo (taken under Panchnama by the police from Ahuja's), as that of former Mrs. Ahuja. Her name was "Pam" witness also identified two photographs as those of herself but she could not say who the persons were in two other photos.

The witness was shown three letters dated May 24, March 19 and April 17, 1959. She said these letters were written by her to the deceased Prem Ahuja and that the first letter was written in 1958 (May 24) and the second in 1959 (March 19). The first letter written on May 24, 1958 was not sent then but it was sent subsequently along with the letter of March 19, 1959.

Defence Counsel : Tell the Court why after writing letter of May 24, 1958 you did not send it till almost a year later.

Witness : I just did not send it.

The defence counsel then read out some passages from the letters and asked the witness to explain the passages. This was disallowed by the Court.

The counsel then quoted from her letter of April 17, 1959 a passage reading, "if only I had a letter from you..." and asked : you have written letters to him (deceased) ? Had he ever put anything in writing to you ?

Witness : No. He has never written a letter to me.

Question : Apart from your intimacy with Ahuja, had you ever at any time thought of leaving your husband for any other persons ?

The Court disallowed the question as being irrelevant to the trial.

Mrs. Nanavati said she was married at Portsmouth in the U. K. in the registry office there. Her parents were at Portsmouth. At present she was staying with her husband's parents.

Answering further questions from the defence counsel she said, she was not allowed to see her husband in the police custody, but in naval custody she used to see him about twice a week. She used to take her children with her. These interviews were always in the presence of a naval police officer.

Whenever she had visited the residence of the deceased along with her husband, it was for a party.

The three letters of the witness to the deceased were then passed on to the jury for their perusal.

Under the cross-examination by the Chief Public prosecutor, the witness said that her marriage with Nanavati was a civil marriage under a licence, which recognised divorce.

The witness said that she had not written or sent any letter to the deceased prior to the letter of May 24, 1958. Asked why she did not send the letter of May 24, 1958 earlier than March, 1959, she replied : "I did not send it earlier than I did because my pride was badly hurt"

Prosecution : Is it correct to say that there was no intimacy between you and the deceased prior to May, 24 ?

Witness : It is not correct. My intimacy with the deceased took place several months before that date.

Prosecution : Will it be correct to say that you took the initiative in this entire affair ?

The judge intervened to ask how the question was relevant. The court, he said, had nothing to do with finding out as to who was wrong and who was right in this matter.

Witness said that she was first introduced to Miss Ahuja in 1956. Earlier to that she had met the deceased. Upto 1958, her relations with the deceased were entirely that of friendship.

Replying to further questions witness said that it was not correct to say that the deceased had not shown any serious intention of any kind about the witness prior to 1958. "He had told me several times on earlier occasions that he wanted to marry me. He had changed after a month or two. Whenever the question of marriage had come up he had tried to avoid it", she said.

Witness said that marriage was not suggested by her. It was first suggested by the deceased. She did not exactly remember when he suggested it but it was before she wrote the letter of May 24, 1958. "Marriage was suggested by the deceased before the intimacy took place", she said.

Mrs. Nanavati said, she was conscious of the complications which would arise out of such a marriage in regard to her husband and children.

Q. Did you try to get a definite reply from the deceased as to what he was going to do with regard to the complications ?

A. I did tell the deceased about the complications. We (deceased and myself) had not come to any solution of this question. We just let it drift.

Witness said it was clear to her that no marriage with the deceased could take place unless she had taken a divorce from her husband. "I did not come to any solution of this problem. I did not know whether I was going to ask for a divorce because I was not sure of Ahuja's intentions. I had not made up my mind definitely whether I will marry him or not".

Q. At no stage you had made up your mind to marry him?

A. At no stage I had made up my mind to marry him because I was not sure of his intentions.

Witness said that she had not told Miss. Ahuja at any time that she was going to marry the deceased. I told Miss Ahuja that I was visiting her brother and that I was in love with him. This I told her in October-November, 1958. Miss Ahuja actually did not tell me anything when I told her this. She just put her arms round me and smiled. She said nothing".

Witness went to the coffee house with Mrs. Julie Mehta, a friend. There they had talked and fixed the details about the trip back to Bombay. The deceased, Miss Ahuja and witness had talks already and they had fixed to travel back to Bombay by car. This arrangement was made a couple of days before the meeting at the coffee house.

Prosecutor : Is it true that while at Delhi, the topic of marriage was again discussed between you and the deceased and you both decided to break the news to Miss Ahuja at Agra?

Witness : Miss Ahuja knew about it. As far as I remember the topic of marriage between me and the deceased was not discussed at Delhi before we left Delhi.

Mrs. Nanavati had met Ahuja alone at Delhi but they did not discuss the question of marriage at Delhi. It was not true that the question of marriage was disclosed for the first time by witness and Ahuja to Miss Ahuja at Agra.

Witness had told Miss. Ahuja about her love affair in October or November, 1958. Both Ahuja and witness had told Miss. Ahuja to help them to meet, but she was not told anything about the marriage, as to how to marry and whether to marry or not. Miss. Ahuja told witness that

her brother Prem Ahuja was old enough to know what he was doing and what he wanted for himself. Witness added that if her brother was loving witness, that was all right ; if that was what he wanted.

The occasion for this was that Commander Nanavati was coming back (to Bombay) and witness had to give an explanation where she was going. Before October, 1958, Miss Ahuja did not know at all that witness was visiting her brother. Before October 1958, witness was going to the flat of Ahuja only when he was there and the timings were known from Ahuja. When witness was going to meet Ahuja, it would be that witness would be using the name of Miss Ahuja as an excuse.

Witness had not told about her Delhi trip to the legal advisers of her husband. She met Mr. Karl Khandalawala, defence Lawyer, about four days ago and Mr. S. R. Vakil was present at that time. She saw Mr. Vakil (also a defence lawyer) for the first time on that occasion, She did not tell them anything about the Delhi trip because she was not asked.

She had not told her husband about the Delhi trip when he was in naval custody because there was always a guard present at their meeting. She had not met her husband on April 29 and she had not met him while he was in police custody. She had also no talk with her husband about the Delhi trip between April 18, 1959 and April 27, 1959.

At Agra, witness did not broach anything to Miss Ahuja though they had conversation everyday during the whole trip to Bombay. The talk was about the trip, how tiresome it was and where they should stop for the night. At Agra they stayed overnight in a hotel, and witness had not told Miss Ahuja at any time about her desire to marry the deceased nor did witness ask for the help of Miss Ahuja in regard to marriage. Witness added that only in October-November 1958, she had a talk with Miss Ahuja about her love affair and that thereafter she had no talk with her (Miss Ahuja) on the subject at any time.

Witness stated that Miss Ahuja had never stated that she either approved or disapproved of the marriage.

Witness said that after her talk in October-November 1958 with Miss. Ahuja, she never discussed her relations with the deceased, with Miss. Ahuja. After her Delhi trip, her husband returned from sea some time at the end of

February or in the beginning of March. She did not tell him anything about the Delhi trip, her husband had not asked her anything about her Delhi trip as she had given him to understand that she had returned by train from Delhi.

Answering further questions, witness said after her Delhi trip, she was thinking about marriage with the deceased but she had not talked with the deceased about the matter. At Delhi or during the return trip she had not discussed the question of marriage with the deceased. It was not true that at Delhi or during the trip she had asked the deceased to marry her and that he was hesitant.

Prosecution—Will you tell the court what prompted you to write this letter (of March 19, 1959) to the deceased ?

The defence counsel objected to the question on the ground that a similar question by the defence in the examination-in-chief had been disallowed. The court ruled out the objection in view of the answers given by the witness in her cross-examination.

Witness : The deceased had given me to understand that he loved me and wanted to marry me. He then tried to back out of his promise. Having broken my marriage, I thought it only right that he should marry me. This is the reason why I wrote this letter of March 19, 1959.

The prosecution counsel then asked the witness to her letter of March, 19, 1959 and tell the court why she had not mentioned anything about the deceased backing out from marriage in that letter.

"This letter of March 19, is a part of my other letter of May 24, 1958. So I did not repeat what I had already mentioned in the other letter. I have written in this letter of March 19, that what I have stated in the previous letter still stands," she replied.

Asked whether she had stated any where in the letter of May 24, that the deceased had backed out or was trying to back out of the promise of marriage, the defence counsel again objected but the objection was overruled.

Witness then replied that she had given an indication in her letter of May 24 in a passage reading, "last night when you (deceased) spoke about your need to marry and about the various girls you may marry, something inside me snapped and I knew that I could not bear as thought of you loving and being close to someone else".

Prosecution Counsel : Even after your return from Delhi, between you and the deceased you had decided by

about April 16, to postpone a decision on the problem of marriage by about a month and meanwhile to seriously and coolly consider the matter.

Witness : That is not quite correct. The deceased had told me not to see him for one month. I was not very happy about it. I had made up my mind that if he definitely agreed to marry me then I would marry him provided I was free. He would not tell me definitely and I felt that this one month, which he suggested, was an excuse on his part to end the affair and to avoid of marrying me.

Replying to other questions, witness said that for the first time she had discussed with her husband about her intimacy with the deceased on April 27, 1959, the date of the incident.

Asked why she had discussed it with her husband when the deceased was avoiding to marry her, she replied : "When my husband asked me direct questions, I had told him the truth".

She said, she had deposed in the examination-in-chief that her husband was "dazed" after he found out about the deceased. She had inferred this from the incoherent tone in which he was speaking for a few minutes. She could not gather what he was saying but she could not make any sense out of it. She could not remember any one of the words he spoke during those few minutes when he was dazed.

Witness said that she had met "pam" who, she had deposed earlier, was "a former Mrs. Ahuja" sometime in 1958 at a lunch in a Bombay Club. It was not true that the entire story of her knowing about "former Mrs. Ahuja" was tutored. The deceased himself had told her that in 1947, he had married "pam" and that her parents had made allegations against his reputation and had taken her away. Asked whether she inquired whether the marriage had been dissolved, she said that the marriage have been dissolved as she happened to be married to her present husband.

Replying to further questions, witness denied that she had been to the C. I. D. Office on the night of the incident along with some others. She was taken to the C. I. D. office on April 28. (the next day after the incident) by Commander Vatcha and also a relative of hers. She also denied that she had met her husband's uncle Mr. Dhanjishah Nanavati (who was working in a city Solicitors' firm) on the night of April 27 and had expressed a desire to see her husband that night.

Witness was then shown a dark coloured trouser and fawn-coloured shirt and she said these were the clothes which her husband was wearing on April 27. After the 27th she was seeing the clothes for the first time in court that-day.

Prosecution Counsel : I put it to you that you, your husband's uncle, his aunt as well as his parents went to the C. I. D. office with several articles taken from your residence, including clothes for the accused, a bedding, and shaving materials to be delivered to the accused in police custody that very night (April 27) ?

Witness : It is not true.

Prosecution : You sat in the car outside the C. I. D. office. While the others went in with the articles ?

Witness : It is not true.

Witness further deposed that she knew that the deceased had a gun and that she had seen it in Asoka Hotel in Delhi. She had not seen any revolver at the residence of deceased in Bombay.

Question : I am definitely suggesting that your husband never said that he would kill himself ?

Witness : My husband clearly said that. Asked how she was indifferent to that statement of her husband, she replied : "I was myself in a state of upset. So I did not think clearly but I was not indifferent to my husband shooting himself".

Question : Despite all that happened you went to the Cinema on that day ?

Witness : It is difficult to explain things to the children. So as I had promised them, I took them to the Cinema.

Question : Where are you staying.

Witness : I am staying with the parents of my husband.

Question : "I am suggesting that you have agreed to oblige your husband now that lover is no more".

Witness : It is not true. I am stating what I actually know.

There was no question by the defence on re-examination :—

Mysterious Love letters :

Some mysterious love letters presumed to be written by some female-friend of Mr. Prem Ahuja, which were reported only in "BLITZ" News Magazine of Bombay, throw

sufficient light on the character of prem Ahuja and reflect his another side. Those love letters were produced by Mr. Chari, Defence Counsel to prove his contentions that Prem Ahuja had decided to live dangerously and was aware of the cosequences thereof.

(I)

Thursday, 8th May, 1958,
8-30 A. M.

My Dear Prem,

For some odd reason I am finding it very difficult to write to you. I tried yesterday, but could not and wrote other peoples letters first to leave myself more time and solitude for yours. But it won't come.

I almost phoned you this morning at about 8 o'clock but I did not want to give you another early-morning shock. See how humane I am ! Nearly nine o'clock now. I wonder if you are up ?

This is a terrible time of day to write a letter to someone you love ! The cold light of early morning, indeed !

?

(II)

Thursday, 8th day of
May, '58, 10-20 a.m.

Now, my darling, I will try and try again. Here is the letter I wrote you yesterday :--

Wednesday, 7th May, 1958.

My Dear Prem,

I saw. yesterday afternoon. She must hate me ; her face was so hard set, her lips so tight, her hands shook when she lit a cigarette.

.....forgot to bring my luggage into Town, and I arrived back without a toothbrush, a lipstick or any darned thing. I came back literally empty-handed-a terrible feeling. I am unemployed, I keep telling myself it seems so desperate.

I remembered about the iceberg, by the way. It is, of course, merely a hearsay opinion of.....He may even have heard me describe myself in that way-or he may have prompted me to do so,for he always urged me to run around with his gay crowd, getting drunk, painting the town

purple, having an irresponsibly immoral time. To make me happy, he said: I laughed at him, knowing all the insufficiency, the inability, the inferiority that nearly five years of celibacy have given root to in me. It was all so ridiculous, I laughed. I could not make love to someone I did not love. I am that truthful, any way. So he said I was unnatural, impossible, abnormal, prudish-an iceberg!

And he was surprised because he said when he first saw me he thought I was a nymph omaniac: Actually he was kind enough to spell it, for fear of hurting my feelings, and rather than enunciate a word like that, he started, N.I.M.F. when I stopped him. So you wonder I am so fond of him.

I thought of all the sayings beginning with "Beware." for you. Beware of the dog? Beware of pity? or;

No, I don't think so. Beware the Ides of March? Beware of Greeks bearing gifts? (Black label)? or Christ was it? Saying "Beware of Soothsayers ..."

An hour passed while I read 3 chapters of Proverbs, Found one I have been searching for years. "Hatred stirs up strife but love covers all offences"

"But-ther is a difference"

"Yes, there is. He is not a separate thing from you. He is a part of you. He is your product. This 'materialization' of yours is a perfect parallel to that."

Part of me. Yes, you are. My other self. The half of me that was lost and wondering. I want you to complete me. I need you to do good to. But how real are you?

Now, unbearable, maddening as it is, I shall not see you for a very long time-ten days at least. I shall probably die in that time. What is there to live for, if I can't see you, hear you, touch you? Nothing. So have pity. Keep me alive with words, somehow.

Darling,
I love you
?

(III)

Thursday 1-30 P. M.

Where are you? I have been trying to phone you all the morning. Shall I become Editor of ".....weekly"? Tell me.

Anyway, just thought of quotation my dear old friend, ...told me the other morning:—"A woman should look so intelligent that her stupidity comes as a pleasant surprise."

That's me :

And, says nice old.....with a chuckle:—"A women should never be of her own opinion—much less of mine."

LOVE YOU

?

(IV)

8th May, 1958, 10 P.M.

It simply is not enough

8x 20	or 9	$\frac{1}{60}$
1/1	1440	60

What do you think I do with the other 159/160 of the beastly day ? Nine minutes out of a whole 24 hours ! I can't live like this. And taking into account yesterday when I did not hear of you at all, it's doubly worse. And to crown it all, the minute my back is turned, you get married ? How could you. (Yes, I suppose you could). *Please don't get married again until I come down.* God knows I'll live that long—it seems like Eternity ! Ten whole days ! ($60 \times 24 : 14,400$ minutes).

I hope to God everyone comes this weekend ; none of them is reliable though. Now . . . wants to come too. He phoned this evening. He will be here for a certainty, even if nobody else is. And what will I do with him, on his own ? No chaperone, for one thing ? No interest for another.

Sorry to bore you with all these silly notes. If they embarrass you, please say so, and I will never write again. (Rubbish ! of course I will) P. S. on second thoughts, no, I won't Please don't let any one else take your shoes off for you. Now practice, I shall become quite perfect. Even when I marry I shall be able to make him extremely happy. He loves that record "when I fall in love", used to play it twenty times running.

Now why am I being so horrible ? Must be because you got married this morning. Oh well !

What to do. Who am I ?

?

(V)

Saturday, 26th April, 1958,
11-20 P.M.

My Dear Prem,

I started to write to you yesterday but got ill and had to go to bed. Nothing serious. They think ptomaine

poisoning. They gave me wonderful shot of morphia last night and I slept the clock round.

I am glad I got sick because when it happened I was writing a very long letter to you, and I'm sure you'd have hated evry word of it—it was so full of affection. It probably helped to give me a fever because bits of it kept going round in my head all night between Pains...

Arriving here on Thursday, senseless with loneliness and misery I understood for the first time in my life what happened to victorian women when they went into "declines", It is like death setting in, being willed to do its work because what is essential to life is unobtainable.

I have never explained to you what happened at birth-day party, and you refuse to understand, but it was like this and goes through life to a certain point with an ideal. As disillusionment grows the ideal sickens, buried beneath disappointment, frustration, agnosticism, bitterness, desperation and despair. And suddenly, when one is resigned to spending a life time in a second rate, lonely, unfulfilled, dead, mistaken but respectable way—Suddenly with only a slight shiver of warning, one is face with that idea personified, perfected more in fact than in fancy. And at that moment, and in these that follows, one says: "This is all I have ever needed. Life didn't let me down, after all."

Only decorum and fear prevent one from saying it aloud, because there is seldom a happy ending. One can cling to one's empty dull life, and wear it like a cloak, for life is a far better story writer than most of us. For one's ideal, in order to earn the title, is a perfect merger of all the good, the clever, the gentle, the beautiful, the superlative, unfortunately its ideal is far and away beyond one's comprehension. A rat race of adoration, in fact. And one finds one has never known before the black despair, the hopelessness of being given pity instead of love.

Yet there is no doubt, one cannot live without the thing one needs.

But the very existence of such a person make one happy, even if the happiness cannot be shared. And now if I feel my "decline" coming on again, so I shall go back to bed? and I am so much alike; we both lose weight and interest in life when we are alone.

Don't be angry with me for saying this: Be generous and attribute it to my sickness and sincerity.

I wish to God I were with you.

DEFENCE ADDRESS TO JURY.....?

The defence counsel in the trial of Commander K. M. Nanavati before the Bombay Sessions Court argued that the charge of murder against the accused had "crumbled" during the evidence and asked the jury to return a verdict of "not guilty of any offence".

The defence rested its case after examining a press photographer and the prosecution had cross-examined two other defence witness.

In all over 30 witnesses, including Admiral Ramdas Katari, Chief of the Naval Staff, and Mrs. Sylvia Nanavati, wife of the accused, were examined during the trial.

Mr. Karl Khandalawala, opening the defence case after the conclusion of the recording of evidence, said, "*This is a case of circumstantial evidence.*" He said that he would show to the jury what he called 14 "*Irrational features*" of the prosecution case.

The counsel said, "There was no one who saw Prem Ahuja being shot or killed. There was no one in the room to tell the court what happened in the bedroom of Ahuja on that day when Commander Nanavati was alleged to have entered the room and shot and killed Ahuja with a service revolver".

"The one man who was there (Commander Nanavati) has stepped into the witness box and faced cross-examination by the prosecution.

It is the most important point of the trial", he said.

"I thought it proper for Nanavati to step into the witness box and be cross-examined, even though he has a right to make a statement and not be cross-examined. He has stepped into the box and subjected himself to the most searching inquiry so that you (Jurors) may judge the facts and decide whether he has spoken truly or not".

The defence counsel argued that this was a case in which "any decent-minded man will realise how tragic it was all and how decent-minded people value the normal sanctity of marriage and happiness". But he made it clear that he did not seek any verdict based on any unwritten law.

"The defence is plain. My defence is that Commander Nanavati has committed no offence in the eyes of man or

God nor any offence in the eyes of law in this country. I seek no sympathy or mercy and there need be none", he said. He was seeking a verdict on the basis of the facts of the case and he could prove his case from the records of the case.

"When I analyse the evidence of those three witnesses. Miss Ahuja (deceased's sister), Anjani Rappa and Deepak Sampat (deceased servants), I say with complete confidence that, not by arguments but from the records, the story that is put forward (by the prosecution) has been proved false".

The defence counsel said that a cardinal principle of law was that homicide, i. e., the mere fact of the killing of a man, was not a crime. The main ingredient of crime was the "*intent*" and there ought to be the *intent to cause injury sufficient in the ordinary course of nature to cause death*. If the intent was not proved beyond reasonable doubt, there could be no offence. "I am going to show you 14 irrational features of the case when I deal with the evidence and I will ask and demand of you a verdict of *not guilty* of any offence", he said.

The counsel said that in law something could be said to have been *proved*" only if after considering all the evidences and the exhibits, the jurors came to the conclusion that something was proved or that there were reasonable circumstances to suppose that it was proved. He could say with a measure of confidence that the prosecution charge of murder had "crumbled" during the evidence.

Another conception of law was that when a fact was neither proved nor disproved conclusively, then it would not be any proof at all, and no matter what feelings the jurors had, they had to return a verdict of not guilty.

The defence counsel pleaded that one of the most important point for the jury to consider in this case was that it was a case of circumstantial evidence because admittedly the door of the bedroom in which Ahuja was killed was closed after Commander Nanavati had entered it and no one saw him shooting to kill. The alleged murder was only an inference drawn by the prosecution on the basis of the circumstantial evidence led by it.

The counsel then quoted a Supreme Court judgement containing, what he called a "warning", to the effect that in case of circumstantial evidence, there was always the danger that conjecture or suspicion might take the place of legal proof. The circumstances, he said, should be of

"conclusive nature and the evidence must not only be consistent with the fault of the accused but it must be incompatible with the innocence of the accused. "Can anyone say that the circumstances in this case are incompatible with the innocence of the accused? Our defence is that there was a struggle and there was an accident even if you do not regard it as proved, still it is your bounden duty to say "not guilty" (if prosecution case is not proved)", he said.

The counsel said that any man had a right to prevent a weapon from getting into the hands of his opponent and if in the ensuing struggle there was an accident, it was not a crime but a misfortune.

The Judge: It is not relevant unless you take up a plea of self defence.

Counsel: It is a question of who gets it first. If I do not hold of it, he might get it and shoot me. Actually the incident took place by accident.

The counsel remarked that on this point there was expert evidence to prove the story of the accused and disprove the story of the prosecution. "In this case I will show that the prosecution failed in its primary duty to prove guilt".

The counsel stated that he would show the jury that there was no "intent" to kill and that there was a struggle for the weapon. Nothing was more dangerous in a case of purely circumstantial evidence than to get pre-conceived notions. There was the evidence of Anjani Rappa, who without seeing what happened in the room, rushed down to the watchman and told him that his master had been murdered. The jury had already visited the place of the incident. The defence had also submitted "most tell-tale" photographs of the bath-room where the struggle took place, he said.

The counsel said that even though this was not a matrimonial case, the evidence in this case with regard to certain matrimonial matters had a vital bearing on this case. Whether the deceased was married or not was a matter of no importance but the fact that there had been opposition to his (deceased's) character on the part of the parents of the girl, whom he married in Karachi in 1947, was a matter of importance, he said.

The fact that Miss Mamie Ahuja (sister of the deceased) had deposed that her brother had not been

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The counsel said that even though this was not a matrimonial case, the evidence in this case with regard to certain matrimonial matters had a vital bearing on this case. Whether the deceased was married or not was a matter of no importance but the fact that there had been opposition to his (deceased's) character on the part of the parents of the girl, whom he married in Karachi in 1947, was a matter of importance, he said.

The fact that Miss Mamie Ahuja (sister of the deceased) had deposed that her brother had not been

married and the contradiction of this statement in subsequent evidence, all helped to throw a search light on the credibility and reliability of the witness. The counsel said that the prosecutor had opened his case with a statement in which he had related the entire story of the family of the officer, whom he had called an efficient officer. He had also said that the story would be proved by him and he would call Mrs. Sylvia Nanavati to be a witness. Since the prosecutor had changed his mind, the defence counsel said, he had taken the lady in the witness box because he was confident that she was a truthful witness. If the defence had the opportunity of cross-examining her, "I could have established her truthfulness more and more", but the prosecution had denied the defence this opportunity.

The defence counsel then gave the jury a short account of the conversation between Commander Nanavati and his wife before the incident on April 27, and said, "for years they had been happy. Then unknown to the husband, the wife formed an attachment to one Prem Ahuja. It is not my policy to say anything hard about the dead. We are not angry and so I say nothing harsh about Ahuja or Mrs. Nanavati. But this much I know that Ahuja acted in a manner in which a gentleman does not act. About Mrs. Nanavati, I say only that she erred and she told you (the court and the jury) frankly about her infatuation. Hers must have been a terrible trial."

The counsel said that Mrs. Nanavati had given evidence to the effect that Ahuja having had his way as far as Mrs. Nanavati was concerned, had not wanted to do the honourable thing by her, namely marrying her. This statement of Mrs. Nanavati had corroboration in the letters she had written to the deceased. "I am not concerned with these things. The object of the evidence given by her is that Prem Ahuja was a man, he had no intention of marrying Sylvia (Nanavati) but only wanted to play about with girls. In these circumstances I ask what any self-respecting Indian would do; he would naturally go and ask of Ahuja for his explanation and whether he was prepared to do the honourable thing. That is exactly what Commander Nanavati did. He went to Ahuja and what was the reply. It was something which is unutterable."

Defence Argument :

Mr. Karl Khandalawala, arguing in defence of Commander K. M. Nanavati, told the Bombay Sessions Court that

the evidence of Dr. A. V. Baliga (a city surgeon) and Provost-Marshal of the Navy Commander Samuel, supported the defence plea of a struggle between Nanavati and Prem Ahuja over the revolver with which the accused is alleged to have shot dead the city business man.

The counsel said that Commander Nanavati had told Commander Samuel of what had happened. Commander Samuel had stated that he heard the word "fight" and said that it was for a revolver. That was perfectly compatible with the story of a struggle.

The evidence of Dr. Baliga, the defence counsel said, also indicated the probability of a struggle.

The counsel added that when there was reasonable doubt in the mind of the jury, that doubt must go in favour of the accused and not in favour of the prosecution.

A special jury had been empanelled to hear the case in which Nanavati had been accused of shooting dead Ahuja in the latter's flat on April 27, 1959. Nanavati had pleaded not guilty.

The defence counsel repeated his allegation that the two servants of Ahuja, who appeared before the court, had given tutored evidence and that the evidence of Miss Ahuja, sister of the deceased, could not be relied upon. There was conflict between her evidence and that of the two servants. There was difference between the story. Miss Ahuja had told the police and her evidence in the court in regard to the time factor of the visit of Commander Nanavati to Ahuja's flat. He would not be making a mistake, the counsel said by saying "that is trying to rule out the defence of a struggle".

The prosecution, had not called the third servant in Ahuja's house as a witness. "Is that the character of evidence on which you would be asked to rule out the reasonable possibility of a struggle having taken place when everything points out to the greater probability of a struggle?" The defence counsel asked.

The defence counsel argued that this was an extraordinary case of police investigation. The accused were not taken charge of and neither was he sent to a doctor. The revolver was not examined for finger prints. The prosecution knew that even if only one finger print of the deceased had been found on the weapon, that would have proved conclusively that there was a struggle for the weapon. The broken pieces of the window pane which was

supposed to have been hit by a bullet were not taken charge of, with the result that the jury could not be shown the bullet marks.

Referring to the reliability of the evidence of Miss Ahuja, counsel referred to a "marriage" of Ahuja to a girl in 1947. He said Miss Ahuja had stated in the court that she did not know that her brother was married. It was given out that Ahuja was married and Miss Ahuja wanted it to be kept back because the matter involved the reputation of Ahuja. Counsel asked : "Do you think such witnesses are reliable in a murder charge ?"

Then again on the question of running Ahuja's house counsel asked the members of the jury whether they would believe when Miss Ahuja told the court that she did not run the house. That was because she did not want to say about the liquor bottles found in the cupboard of Ahuja's bedroom. Counsel added that women generally run the house and Miss Ahuja did not want to say so.

Mrs. Nanavati was a frequent visitor to Ahuja's flat, and by "frequent", Miss Ahuja said she meant sometimes. Counsel stated that the evidence of Mrs. Sylvia Nanavati (wife of the accused) about the visits was truthful and Miss Ahuja did not want to admit it. Mrs. Nanavati had given the reason for such visits.

Then again about the visit to Delhi, Miss Ahuja was telling in her evidence "*an extraordinary story* that while at Agra, without any rhyme or reason, Ahuja told her that he might be married to Mrs. Nanavati, thereafter there was no discussion between the brother and the sister. In cross-examination, Miss Ahuja had stated that if she had known of the love affair, she would not have invited Mrs Nanavati to travel with her to Bombay by car. But counsel said the car belonged to Ahuja and not to Miss Ahuja as against Miss Ahuja's evidence, there was the evidence of Mrs. Nanavati which was supported by the two letters, one dated May 24, 1958 and the other of April, 1959. From this, counsel said, the story of Miss Ahuja was not true, and added that Miss Ahuja also was a partisan witness.

The defence counsel said that it would be dangerous in the extreme for the jury to act on the evidence of Miss. Ahuja particularly when they found such a vast conflict between her evidence and the evidence of the two servants,

Counsel said that when they had to approach *a case of*

circumstantial evidence, they must be first sure that the accused was entitled to the benefit of every reasonable doubt and that when the accused offered a reasonable explanation of his conduct, even though he could not prove his assertion, they should be ordinarily accepted unless circumstances indicated they were false.

In this connection, counsel referred to the evidence of Dr. Baliga which, counsel said, envisaged a reasonable possibility of a struggle. If the accused was so minded, he could have moved Ahuja at dressing table. He then referred to the position in which the body of Ahuja was found lying and the evidence Commander Nanavati gave.

Referring to the evidence of commander Samuel, provost Marshal, who was a high ranking officer completely independent of Commander Nanavati, counsel said that commander Nanavati had told Commander Samuel of what had happened. Commander Samuel had stated that he heard the word "**fight**" and said it was for revolver. This was perfectly compatible with the story of the struggle.

Commander Nanavati told commander Samuel of a fight, but he also said that he did not know how it happened. This was vital evidence in the case ; Commander Samuel had told the truth and there was strong corroboration. Samuel was an independent witness and no jury could have reason for not accepting that evidence.

Commander Nanavati then went straight (after meeting the constable at Government gate) to the police, counsel said. Mr. Khandalawala added that juries were not permitted to speculate, and there was no question of solving any jigsaw puzzle. The reasonable possibility of the struggle was there by every circumstance, and the conduct of the accused was shown by independent evidence. Counsel added that where the proof led to strong suspicion, the benefit of the doubt must be given to the accused.

Counsel then referred to the evidence of Deputy Commissioner Lobo and Inspector Mokashi (C. I. D.) investigating officer. Deputy Commissioner Lobo had stated that there were no bloodstains noticed on the clothes of the accused. Dr. Baliga had in his evidence stated that in the case of bullets, there would be spasms, and there would be no immediate flow of blood unless a big blood vessel was injured,

The police evidence showed that there were no cuts or

tears in the clothes of the accused, and counsel stated that there were no cuts or tears because they were struggling for a revolver

He then referred to the clothes worn by the accused and said that since the evidence of Dr. Baliga had established that there need not be any blood stains, the only point of importance was that the police wanted to cover up their investigation by saying that the accused was wearing whitish clothes (white pant and half-sleeved shirt). The evidence of the Press photographer showed that he was wearing dark coloured pant. He contended that there was no change of clothes till the remand was taken, and that the allegation that the accused was given facilities for changing clothes and bedding on the night of April 27, was not correct.

The defence counsel then dealt with the evidence of Mr. C. T. Bhanagay, ballistic expert, Dr. R. M. Jhala, police Surgeon and Dr. A V. Baliga, a noted city surgeon who appeared for the defence.

The counsel said that Mr. Bhanagay had deposed that carbonaceous tattooing would be found to a maximum distance of six to eight inches in the case of weapons of the type used in this case. In the face of this evidence, he said Dr. Jhala's statement admittedly on the knowledge of reading standard books concerning revolvers in general, that tattooing would found up to 18 inches was a "ludicrous theory", which should be rejected. "The expert has given evidence relating to the weapon used in this case. He has tested the weapon. Then where is the need for generalisation on the basis of books?" he asked.

The counsel said that if the ballistic expert's evidence of tattooing reaching a maximum distance of six to eight inches was accepted, "the whole prosecution case against a struggle is swept aside like a pack of cards". It was only after the cross-examination of the prosecution ballistic expert, that the Police Prosecutor thought of putting Dr. Jhala as an "expert from book knowledge," and allowed him to theorise.

The ballistic expert had accepted the proposition of one of the most well-known authorities on ballistics, that "if two persons are struggling for the possession of a loaded revolver, it could easily be fired by accident because most modern revolvers are of double action as well as single action". The weapon in the case was a double action revolver.

The defence counsel then handed to the jury two bullets picked up from the bath-room of the deceased, and said that the bullets had been flattened, bent and twisted. Mr. Bhanagay, he said, had testified that this damage to the bullets could not have been caused unless they had hit a hard surface and ricocheted.

"Where did they hit, if not in the bath-room from where they were picked up?" he asked, and said that two police officers, who had given evidence, had lied when they deposed that they had looked for ricocheting marks in the bathroom and the bed-room of the deceased and found no such marks. "It is very clear and they did not look for ricocheting marks and have given false evidence after the evidence of the ballistic expert," he said.

The counsel then referred to the medical evidence of Dr. Jhala, and said that besides the five bullets wound, the post mortem report had mentioned a sixth wound on the right shoulder of the deceased. It was an important wound which went to prove that the accused and the deceased must have been pushed and he must have banged against something to sustain that wound.

The defence counsel then referred to the injuries found on the body of Ahuja.

According to Dr. Jhala, the Police Surgeon, defence counsel said, if there were no tattooing marks the mouth of the muzzle must be beyond 18 inches and according to books, which he depended upon, even smokeless powder would be seen upto 14 inches. Counsel said that everything depended upon the type of the revolver and the powder of the cartridges, and according to Mr. Bhanagay, the maximum would be six to eight inches. But Dr. Jhala had stated that if there were no tattooing mark, the distance must be over 18 inches. When two persons try to get the revolver, they must be close to each other. If there was no struggle, one would not reach into the clutches of the other. At least the man with the revolver would stand away. Here, according to Bhanagay they were closed and according to Dr. Jhala they were within 18 inches, and this, counsel said, was an irrational feature in the case. Dr. Jhala could not get away from the fact that the two men were within 18 inches and that was an irrational feature of the case indicating a struggle.

Referring to the post-mortem notes, the defence counsel said that Dr. Jhala based his evidence not only on the

post-mortem notes but also on his memory (web injury). Dr. Jhala remembered this case because it was an important case. This counsel said was a bad reflection on this witness.

Dr. Jhala had stated that if a bullet grazed on two bones it would lose its gyratory action and it could not make an abrasion collar. This answer was given by him although he was not a ballistic expert, from his medico-legal knowledge.

The counsel said that the position and the number and the nature of injuries, the condition of the bullets, and with only three bullets having been fired causing five injuries, indicated the probability of the struggle for the weapon.

The nature of the two bullet injuries, according to Dr. Baliga, indicated that in all probability they were caused by the muzzle of the revolver being directed in all odd directions which was likely to be the case in a struggle for the weapon. "Can anybody now rule out the reasonable possibility of a struggle in a case which is entirely founded on circumstantial evidence ? The counsel asked, and said he would ask the jury without hesitation to accept the opinion of Dr. Baliga in regard to medical aspects of the case and reject the evidence of the Police Surgeon.

Prosecution's address to Jury :

Mr. C. M. Trivedi, Chief public prosecutor, today told the special jury in the Bombay Sessions Court trying Commander K. M. Nanavati of I. N. S. Mysore on a charge of murder of prem Ahuja a city businessman. that the prosecution was prepared to reduce the charge

Mr. Trivedi, who began his address to the jury this afternoon after the defence counsel had concluded his 13 hour address, said even though the evidence led by the prosecution fully justified a charge of murder-"a cold blooded, deliberate murder"- it recognised that there were certain exceptional circumstances in the case, which would justify lesser verdict, that of culpable homicide under section 304(ii) of the Indian Penal Code, and he would ask the jury to return such a verdict.

"That is the fairest thing that can be considered and it is the best interest of the accused", he said.

In his address spread over three days the defence counsel, Mr. Khandalawala argued in support of the plea that

there was a struggle between Commander Nanavati and Prem Ahuja during which some shots accidentally went off from Nanavati's revolver.

The public prosecutor told the jury that this "smoke-screen of a struggle theory" advanced by the defence in support of a plea of not guilty could not help Commander Nanavati because it would not be of any avail at all in pleading "accident and misfortune" under Section 80 of the Indian Penal Code.

Don't bother about this bubble of a struggle theory. The exemption provided under Section 80 has to be satisfied in all its ingredients and in the face of the evidence in this case, an exemption can never be claimed under this section. You will never be justified in any such perverse action", he said.

The prosecutor said that the fairest thing that could be considered was lesser verdict. He said that in his address opening the case for the prosecution he had gone out of his way to offer "this way out" for the accused. But he regretted that as the case proceeded, "the way Admirals came here and the fanfare that was got up, it drove me mad",

The prosecutor : This is the simplest of case and there is overwhelming evidence pointing to the guilt of the accused on a charge of cold-blooded murder. It is the easiest thing for the accused to get a revolver. He gets the revolver and goes after man, who was seduced his wife, and he is proud of what he has done.

The prosecutor said that the only correct thing that a man in the position of the accused should have done was to admit his crime. "Instead of that the story of a struggle emanates from his own trained mind and the ingenious mind of his defence counsel" he said.

The prosecutor said that from the evidence led by the prosecution, it was quite easy to understand what had happened. "But here the accused is Commander Nanavati and you (jury) are being asked to believe that the most unnatural thing would happen in his case just because he is the second in command of India's proud flagship, I. N. S. Mysore. He has gone and riddled Ahuja with bullets and he has gone and admitted it to Commander Samuel. That is exactly what he has done, But now the word "fight" is introduced and the defence wants you seriously to believe it".

The prosecutor said that the introduction of the struggle theory had been the "*most dishonourable thing*" in the case. The way the defence counsel had harangued in cross-examination and in his address to the jury had all helped to create an atmosphere of excitement and sensation. He urged the jury not to pay the slightest attention to "*this artificial atmosphere*" but to coolly analyse the evidence keeping in view the cardinal principle that in the eyes of law all were equal.

Nobody here is out to secure a conviction for the accused, he said. "I am doing my best to give fair trial to the accused. My conduct in the case will prove to you that I am not a persecutor as alleged by Mr. Khanda-lawala, but a prosecutor discharging his duty in the fairest possible manner."

The prosecutor said that even though the defence counsel had argued eloquently on the struggle theory, he had not said a single word on the legal position. The jury could return a verdict of not guilty only if it was proved that there was an accident and the circumstances of that accident satisfied all the ingredients Section 80 of the Indian Penal Code.

The relevant position was the "*nothing is an offence, which is done by accident or misfortune and without any criminal intent or knowledge in the doing of lawful act in a lawful manner through lawful means and in proper caution and care.*"

In this case, the prosecutor said, none of the essential ingredients of this section could be satisfied. There had been criminal intent because the accused had admitted that he wanted to thrash Ahuja, which was not a lawful act. "He has gone to Ahuja with full preparation, by taking a loaded revolver and there is nothing to show that he has acted in proper caution and care. It is for the defence to satisfy you (jury) about the requirements of Section 80 before allowing their imagination to run riot. So don't let you be bamboozled by this theory", he said.

He then read the relevant provisions of the penal code relating to murder (Sec. -302) and culpable homicide not amounting to murder (Section 304) and also the various provisions and said that before pronouncing a verdict, the jury must satisfy their own conscience that they would be justified on the basis of the evidence to bring a verdict of guilty for a lesser offence.

It was possible, he said, that a killing done under 'sudden and grave provocation' could be dealt with under Section 304, but the evidence in this case showed, according to the counsel, that the provocation was given much earlier than the actual offence. The provocation was given at a conversation between husband and wife before lunch at the home of the accused, while the actual offence took place hours later at the home of the victim.

Another provision to Section 304 was that provocation of words or gestures would not be sufficient by themselves to justify killing. Considering that it was not Ahuja, who provided the "sudden and grave provocation", any words or gestures used by him could not be considered as provocation for the accused killing him. "There was sufficient time for preparation for murder and the evidence shows that all the circumstances fit in with the ingredients of a murder, pure and simple, as contemplated under Section 302".

Mr. Trivedi, the public prosecutor said that the law was also clear on the point that admission of having committed adultery was no excuse for an offence under Section 304.

Mr. Trivedi said that the evidence in the case was "crystal clear". "In this case there is evidence of preparation, intention, motive and the final action. It is very difficult to find a case such as the present one, in which there is so much of evidence showing the intention to kill, and the killing executed with deliberate preparation. In this case there is evidence, direct, indirect, circumstantial and otherwise to prove a charge of murder", he said.

But he added, he had no hesitation in suggesting to the jury that if they were satisfied and if the law allowed it, they could consider returning a verdict for a lesser offence.

The story of death by *accidental firing* is pure moonshine. "*It is completely a murder*", the prosecutor said.

Justified the charge of murder, the prosecution recognised that there were certain exceptional circumstances the case which would justify the lesser verdict, that of *culpable homicide not amounting to murder*. He said, "I certainly did not want to suggest that in this case such circumstances are particularly present or the prosecution is actually convinced of these circumstances being present".

The circumstances in the case, the prosecutor said, did not land themselves to the defence plea of accidental firing. The circumstances also did not show that there was a grave and sudden provocation to make the offence of murder into a lesser offence of culpable homicide not amounting to murder, he said.

Mr. Trivedi said that the most natural thing to have happened on April 27 last (1959), was something like this :

"Ahuja was at the dressing table when the accused went there. Hearing the door (of bedroom), open and hearing somebody calling him a "swine", Ahuja's attention was naturally directed to that. Then only two sentences were exchanged and the accused pulled out his revolver. That frightened the victim and he tried to enter the bath-room and shut the door. In the rush he left one of his chappals in the bedroom. Unfortunately before the victim could enter the bath-room, a shot was fired. He received three injuries on the fingers as he is trying to close the door. After the injury he cannot move much and he received the chest injury by an other bullet. Dr. Jhala (Police surgeon) has said that the chest injury will not be immediately fatal. The accused fired again and as the victim was collapsing in the bathroom the third bullet grazed his head and caused a gutter fracture of the skull".

The prosecutor then dealt with the question of *intention* and said that according to the defence, the desire of the accused was to get an explanation from Ahuja and that he had no intention to kill. He read from the evidence of Nanavati portions relating to the struggle and said that it would be necessary to pull the trigger for every shot fired. If the trigger was moved, it must have been the accused himself, and the force applied must be necessarily sufficient to move the trigger.

The story of the struggle by the defence, the counsel said was an after-thought, "as a result of tutoring somewhere". He said that Nanavati told the committing Magistrate that he did not propose to make any statement in that court but would make his statement in the Sessions. The accused could have told the story to Deputy Commissioner Lobo (to whom he reported first) or to Commander Samuel (Provost Marshal who directed him to Lobo).

The prosecutor said that the injury on the skull had become the most controversial part of the medical evidence because it provided the most vital clue that the head injury was caused by a bullet fired from behind the victim. If this was conceded, he said, the struggle theory of the defence would be pricked for the last time.

Considering the importance of the head injury, the prosecutor, said that Dr. Jhala had preserved the skull and produced it in the court, even though his duties required only to describe the injury and the dimensions of the gutter in his post-mortem report. "Here is a doctor who has done his job most thoroughly and yet he has been abused the most by the defence counsel, he said".

The prosecutor, said that several defence witnesses had given "partisan evidence" and had been "tutored to support the defence story of a *struggle*".

The prosecutor, Mr. Trivedi said that he was proud of the Indian Navy and the efficiency of its officers and men but he had to say that "the most irresponsible issue of a revolver (to the accused) had resulted in the murder of a man. This is the plain truth that has emerged from the evidence and that tells upon the efficiency of the naval officers".

He said that Lt. Cdr. Cooper, Gunnery Officer of I. N. S., "Mysore", had admitted that he had advised his Captain that the issue of a revolver to the accused would be in order, but when asked in the court, he had not been able to produce a single rule or regulation which permitted such issue. There was also the alteration of the date relating to the issue of the revolver in the small arms register of the ship which looked "suspicious", he said. Mr. Trivedi said that Lt. Cdr. Cooper's evidence relating to the dress worn by the accused when he visited the ship on April 27, was the result of tutoring.

Mr. Trivedi said that Commodore Nanda had come forward and given evidence regarding the proficiency of the accused in shooting practices held on I. N. S. "Mysore". He had to contend that this evidence was also tutored because Commodore Nanda had failed to show a single entry in the small arms register relating to the issue of arms for these shooting practices. The ammunition register had also not been produced on the ground that it was a secret document, even though the naval officer had contended that the register would show entries relating to

the issue of ammunition for shooting practices. "Where is the need for all this? This is a simple case of murder by shooting and where is the need for proving the accused's efficiency in shooting? The officer should have declined to come to give this evidence he said.

Mr. Trivedi then dealt with the evidence of defence witness, Dr. A. V. Baliga, a noted Bombay Surgeon. "A doctor of his eminence landed himself into trouble by taking up a deliberately partisan attitude and expressing a very irresponsible opinion just to support the defence theory of a struggle".

Mr. Trivedi said that the police surgeon had come for the bitterest abuses on the part of the defence counsel merely because he had ruled out on the basis of his post-mortem examination the defence theory of a struggle. Dr. Baliga, he said was an eminent surgeon but not a post-mortem expert like Dr. Jhala, who was doing post-mortem on a number of cases daily. Dr. Baliga had also admitted that he was not a medico-legal expert, while Dr. Jhala was one. The defence had put up Dr. Baliga only to confuse the issues in the case and despite Dr. Baliga's eminence and his qualifications, these were only of secondary importance as far as the case was concerned. Mr. Trivedi urged the jury to reject the opinions expressed by Dr. Baliga, which were admittedly of a general nature.

The prosecution remarked that the story of a struggle between the accused and Ahuja over the revolver during which shot went off accidentally, as stated by the defence, was a figment of imagination. He said that this defence story of struggle had never arisen and never existed. The story was believed by the circumstances in the case.

In support of his contention that there was no struggle, Mr. Trivedi said, he would rely on medical evidence, oral evidence of witnesses, circumstantial evidence, and the inherent improbabilities in the conduct of the accused.

Referring to medical evidence, the prosecutor compared the evidence given by the Police Surgeon, Dr. R. M. Jhala, and Dr. Baliga, a noted Bombay Surgeon. Dr. Jhala's evidence had ruled out a struggle, while Dr. Baliga had tried to gloss over and express "a sort of difference of opinion". After describing the nature of the injuries, the prosecutor said that according to Dr. Jhala, the head injury was necessarily fatal, while the chest injury was sufficient

in the ordinary course of nature to cause death. All the five injuries could be caused by bullets.

The injuries on the left-hand fingers, which were in a line were impossible to be received if the assailant's hand was in grip. It was after the injury on the head received by Ahuja that he slumped and this was the most natural inference that could be drawn. •

It was the opinion of Dr. Jhala that the chest injury would take time for bleeding, at least a couple of minutes, and make the victim weak and slump. The prosecution accepted it as a fact that the whole incident took not more than 30 seconds, between actually 20 and 30 seconds. Mr. Trivedi said that the injury in the chest had preceded the head injury, but it was a matter for guessing whether the chest injury was caused first or the injuries on the fingers.

Analysing the circumstances, Mr. Trivedi said that Ahuja was at the dressing table when the accused rushed into the bedroom and immediately within a few seconds shots were fired. The natural thing that would have happened was that Ahuja had tried to rush into the bath-room just to protect himself and, if possible, just to shut himself up in the bath-room to ward off the "showed of bullets". He added that was the commonsense point of view that struck him.

He suggested that the injuries on the fingers were the first and Ahuja did not collapse. The second bullet was directed towards the chest and the victim did not slump, and with the third shot on the head he slumped. Whether the injuries had been explained by Dr. Jhala in a most reasonable and scientific way or not was for the jury to decide.

The prosecutor then with the skull of Ahuja, a scale and the revolver explained to the jury how the injury on skull would have been caused, and gave them to the jury to get themselves satisfied. He said that the injury on the back of the head could not have been caused while the victim and the assailant were in a grip. The suggestion he made was that after glancing, that is, after striking at a tangent, the bullet hit the window pane and fell.

"To prick the big bubble of struggle", the prosecutor said, the injury on the head was taken as the basis of the examination and cross-examination of the two doctors, and Dr. Baliga "made a bold retreat until he collapsed".

Mr. Trivedi then dealt with the finger and chest injuries and said that Dr. Baliga, though a great surgeon, had no idea of medico-legal problems and no knowledge of post-mortem examinations, and his evidence was given just to create confusion where none existed.

Mr. Trivedi said that there was a great deal of examination and cross-examination of the prosecution ballistic expert and Dr. Jhala and the defence witness Dr. Baliga in regard to the distance upto which carbonaceous tattooing would be found. Dr. Jhala, he said, had cited four authorities to prove the average range at 18 inches while the defence had depended only on one authority to prove that the range would be only 12 inches.

Whatever be the range, he said, the injury on the skull was the most conclusive proof that the accused had fired at an unarmed person from behind and that would be necessarily fatal. "Does it leave any doubt in your mind ?" he asked the jury,

He also asked the jury to consider whether, as suggested by Dr. Baliga, a single bullet could cause the injury on the web between the little and ring fingers of the left hand of the deceased and then cause the chest wound entering near the collar bone leaving marks of an abrasion and then travel in a downward and backward direction.

This wound, the counsel said indicated that the muzzle would have to be high above the victim, which was an impossibility if, as contended by the defence, the alleged assailant and the victim were in a grip.

Dr. Baliga's combination of the two kuckle wounds on the left-hand fingers and the skull injury would be possible only if "an impossible dance position" had been taken by two men in their imaginary grip.

Mr. Trivedi then read out the evidence of Miss Mamie Ahuja, sister of the deceased, and their two servants, Anjani Rappa and Deepak Sampat, in regard to the incident on April 27. He said that the evidence of these witnesses were important to determine the time factor of the incident which, he said, had been established at between 20 and 30 seconds and this alone would make the struggle theory untenable.

"It was sudden, barbarous attack and the victim was riddled with bullets in a few seconds. That is apparent from the evidence of the three witnesses (Miss Ahuja and two servants), he said.

Mr. Trivedi described as "utter improbability" the defence contention that the accused placed the packet containing the revolver on a nearby cabinet and raised his hands to thrash the deceased and had taken the weapon only after the latter made a grab for it. "A man going with full determination and then leaving the weapon on a cabinet is the most unnatural thing." He said. Mr. Trivedi said that the revolver was concealed in a non-transparent brown paper envelope and therefore the deceased could not have known what was in that envelope, even assuming that the accused might place it on the cabinet. "The revolver was taken deliberately, it was loaded then and there on the ship and it was concealed in a brown paper packet and taken to the unfortunate victim's residence. These actions are consistent with the commission of a deliberate crime of murder", he said.

Mr. Trivedi then referred to the evidence of the bearer Anjani and said that evidence clearly showed that there was no time for struggle between the accused and Ahuja.

Anjani had stated that he saw the accused standing in the bedroom with the revolver. That also clearly showed how and where the whole incident took place. Sampat, another servant of Ahuja, also told the same story. Miss Ahuja also had heard the shots.

After referring to the evidence of the three witnesses the prosecutor said that on the oral evidence of these witnesses, the idea of a struggle could not be sustained.

Mr. Trivedi said that the accused could have stopped in the flat and told Miss Ahuja that he had not intended to kill but that it was an accident. He added that if the accused had not done it deliberately and had known that he had killed Ahuja, like any man he would have immediately stated: "I am so sorry. I came with a different purpose. Something terrible had happened".

Referring to the *circumstantial evidence*, the prosecutor referred to the talk between Commander Nanavati and his wife and her confession of adulterous action. The provocation offered was of a nature which was so upsetting that the accused was dazed by it. But, Mr. Trivedi said, that provocation was not sufficient to take the life of the other man. There was only one exception and that also

under very special circumstance, namely, the husband finding his spouse in the arms of another. In such a case the offence of murder would be reduced to one of manslaughter, that is, culpable homicide not amounting to murder. But the accused had not taken up that defence. However, taking the facts into consideration, namely what happened between 1-30 p. m. and 4-30 p. m. on April 27, he thought that the judge would put the law on the point of provocation to the jury, if at all that point arose.

Mr. Trivedi read out in the court three letters written by Sylvia, wife of Commander Nanavati, to Ahuja and said that the letters proved that "it was no as if nothing was known to him (Nanavati)". The last of these letters was written on April 17, 1959.

Things were in the atmosphere and all that actually must have happened was that on that day (April 27) when Sylvia even refused to answer the question whether she was prepared to give him (Ahuja) up, the determination that the accused came to make was to get rid of the man whom his wife was not prepared to give up", Mr. Trivedi said.

The prosecutor also said that the letters proved that the defence story that the deceased was trying to back out of marriage was "completely false". "It could be inferred from these letters that the refusal of the wife to remain with the husband and the wife being not given then freedom to go, has resulted in the killing of the man who was taking away the wife".

Mr. Trivedi asked the jury to reject story told by Mrs. Nanavati in the court which he said was "contrary" to the picture disclosed by the three letters. She was helpless and was living with her in-laws. "It is because of her helplessness that she is here now to give another good certificate to her husband," the counsel said.

The Chief Public Prosecutor, Mr. C. M. Trivedi, concluding his arguments said, "any notion that a wronged husband could take up a revolver and shoot should be staunchly discouraged."

He said in the court that he had received some threatening letters. "Ever since the trial began, I have witnessed some-what saddening spectacle of crowds, their morbid curiosity and their slogans of sympathy. I feel sad because it does not augur well for the system of justice which we have been trying hard to retain, that is trial by jury", he said.

Concluding his 12 hour address, spread over four days, Mr. Trivedi said that the prosecution had conclusively proved the charge of murder under Section 302 of the Indian Penal Code and that there were both intention and knowledge. If the jurors agreed with him in this, he said then whatever the defence put up or the motive attributed to the crime, would all be irrelevant so far as the jury were concerned. "You are the sole Judges of the facts and no extaneous considerations or sympathies or otherwise should be allowed to play in your verdict", he said.

Mr. Trivedi said that he was conscious that he stood for a cause which did not appear to be popular. He had also been the recipient of threatening letters. "Ever since this trial commenced, I have witnessed the somewhat saddening sopectacle of crowds ; their morbid curiosity and their slogans of sympathy. I feel sad because it does not augur well for the system of justice which we have been trying hard to retain, that is, trial by jury", he said.

Mr. Trivedi said that the system of trial by jury was under fire from all sides and there was an ever-growing threat of its abolition even in Bombay city which was its last strong, hold. The main attack had been that juries were swayed by sentiments and sympathies of the common man and the law was left in the lurch. if the system had succeeded, in Bombay, he said it was because juries had dissociated themselves from the "mentality of the mob".

If the crowd outside the court room was an index of public opinion, he said, he felt sad that "we are at the threshold of the breakdown of organised society and reversion to the law of the jungle where judges and juries are not required and each avenged his wrong in his own way according to the weapon he possessed.

Mr. Trivedi said that the law in this country was not powerless to deal with adulterers and erring wives, but, he added any notion that the wronged husband could take up a revolver and shoot should be staunchly discouraged.

Mr. Trivedi said that he did not want to create an impression that sympathy and mercy had no place in our system of justice, but, he added, the jury had to find out the facts and it was for the learned Judge who

presided to act further, and the law left enough room for sympathy and mercy in his hands. The powers of complete pardon were also vested in the chosen representatives of the people—the Executive. "After we have done our part in this case, it is for the Executive to take notice of public opinion. Therefore the crowd outside the court has gathered at the wrong place. It ought to be at the secretariat".

Mr. Trivedi said that the defence counsel had said that the accused stood in no need of sympathies or mercies. "It is mere bravado. The accused will need all the sympathies in the world and he will have all the sympathies, but it will come only from those who have to deal with public opinion. It is not our function", he concluded.

Mr. R. B. Mehta, Sessions Judge, sum up and told the jury, hearing the trial of Commander K. M. Nanavati on a charge of murder that they were dealing with circumstantial evidence "and therefore you have to take all circumstances together and judge whether prosecution has established the case or not".

So far as the defence was concerned, he said, it would be enough if the defence was able to make their story "reasonably true". The defence need not establish a defence.

"It is for the prosecution to prove their case".

Nanavati has been accused of shooting dead with a service revolver a city business man, Prem Ahuja, in the latter's bedroom on April 27, 1959. The defence has pleaded that there was a struggle over the revolver and Ahuja died accidentally.

The Judge said that the question in this case to consider was whether as the prosecution alleged, Nanavati unfortunately lost his temper and because of the heat generated by that passion the full effects of which he did not realise, he shot dead Ahuja or believe in the version of Nanavati that he went to the deceased for a discussion, that during the discussion there was a struggle and fight for revolver and during that shots went off accidentally.

Mr. Mehta said that the conduct of the accused 'Immediately after the incident is a relevant factor'. The jury had also to decide whether the evidence of Miss Ahuja, sister of the deceased, and his servants was "tutored" as alleged by the defence. Admiral Katari, Chief of the

Naval staff had, the Judge said, testified to the character of the accused and told them of the strong metal and fibre he (Nanavati) was made up of". If that was so, it was for the Jury to consider whether in an incident like this, where by an accident someone slumped the accused would be so much upset and dazed as not to know what to do".

Mr. R. B. Mehta, Sessions Judge, who started his summing up after the conclusion of the address of the Chief Public Prosecutor, said that the case had evidently attracted much public attention. "It is therefore of extreme importance", he told the jury, "that you should dismiss from your minds anything that you might have seen, heard or felt outside the record of this case in this court, your approach to the case must be a judicial one, irrespective of the rank or status of either the accused or the deceased".

The Judge then gave a brief summary of the prosecution case and then proceeded to explain to the jury the meaning of murder under Section 302 I. P. C.

The Judge then referred to "*intention*" or "*knowledge*" and said that intention and knowledge were conditions of mind and they were not capable direct proof, and the jury had, therefore, conduct and circumstances in the case.

Mr. Mehta added that a person who was not insane was presumed in law to know the natural consequences of his act, and the jury had to find out the intention or knowledge of an accused from the nature of the weapon he used, from the nature of the injuries caused and from the parts of the body where the injuries were inflicted.

Then the jury had to consider the aim and purpose of the act. If a person fired a pistol at another and caused death, it was open to the jury to hold that the former had intended to cause death, or to hold that he caused bodily injuries sufficient in the ordinary course of nature to cause death, or that he knew that act was so imminently dangerous that was the most probable result. But the jury should not confuse intention with motive.

The Judge said in this case, according to the prosecution, the motive behind the crime was alleged to be that the accused suspected, according to information from his wife, that his wife was in illegitimate friendship with Ahuja. The prosecution stated that the accused became angry, lost his temper, and in a fit did an act which

resulted in the death of Ahuja. Motive, the judge said, was a corroborative act, and the offence must be proved by independent evidence.

The Judge explained the provisions of Section 302 I. P. C. (murder), Section 304 (part 1) (culpable homicide not amounting to murder) and Section 80. If there was grave and sudden provocation for the murder, then section 304 would apply. But provocation should be both sudden and grave. The jury had to see whether the provocation was grave and sudden enough to provoke the offence meaning murder, and this was a question of facts.

The jury had also to bear in mind that the provocation was not sought or voluntarily provoked by the offender, as an excuse for killing a man. They had also to see whether an ordinarily reasonable person would be gravely and suddenly provoked in this situation, and whether in such a provocation, the person provoked would also use such force or violence as was used by the accused.

Provocation need not be caused to a person face to face. It could be caused by information conveyed. Provocation would arise if the conduct of the deceased was such as would cause a reasonable person (and actually the accused) to lose his self control that he used violence of the degree and nature as alleged in the case. The provocation must be such as reasonably justified the violence. In such cases, Section 304 would apply.

In this case, the jury would bear in mind that there was no direct contact of the accused with the deceased on the day of the incident. Provocation could result from the information according to the accused, given to him of the intimacy of his wife, on that day at about 1-30 p. m. He then went to the ship and asked for a revolver. He talked about the ship's business with the Deputy Supply Officer and later drew the revolver, for, according to the accused, to commit suicide.

According to the prosecution the assault in question took place at 4-20 p. m. The jury had to consider whether the provocation in this case was grave and sudden and whether the accused lost his self-control and whether the provocation was such as to drive the accused to the extent of killing the deceased. If all the tests were satisfied then only the accused could claim the exemption provided. In this connection, the jury had also to consider the words

exchanged in the bedroom and find out whether there was sudden and grave provocation.

Several provisions had to be satisfied before the exemption under section 80 was claimed. The Act itself must be an accident or misfortune and there must be no criminal intention or knowing in the doing of the act, and that act must be done in a lawful manner and must be done by lawful means. Further in the doing of the act, it must be done with proper care and caution.

The jury had to consider all the facts which might emerge from the evidence in the case whether proper care and caution was taken in taking a loaded revolver to the residence of another person with whom the former was going to talk and if he did not get an honourable answer he was prepared to thrash that other person.

The jury had also to consider whether it was an act with proper care and caution to keep that loaded revolver in the hand and thereafter put it aside. Whether that act of the accused could be said to be an act which was lawfully done in a lawful manner with proper care and caution. If it was, then only could the exemption come in.

Towards this concluding stages of trial, detachments of steel helmeted anti-riot police and a contingent of women were on duty, though admission to the court room was restricted to only holders of passes issued by the court registrar and the police, yet a number of persons packed the corridors waiting for a chance to squeeze in if they possibly could.

Jury's Verdict :

The nine member jury gave a verdict of not guilty by 8 to 1 on both the charges of murder under Section 302 I. P. C. and culpable homicide not amounting to murder under section 304 I. P. C.

The judge termed the verdict of the jury as "totally perverse". Pending the disposal of the reference by the High Court, Commander Nanavati continued to be in naval custody.

There were wild scenes of cheering and clapping when the jury emerged from the room after a 135 minute session and declared its verdict.

The judge ordered immediately that the court room be cleared of the public and said that their behaviour was "most disgraceful and nauseating".

Outside the court also a large crowd had collected when it was known that the jury had retired at 4-40 p. m. after a seven hour summing up by the judge.

Steel helmeted policemen were posted on the approach roads to the Sessions Court building to control the crowds. A number of policemen in plain clothes were present in the court room.

Commander Nanavati formerly seemed in command of the flagship I. N. S. Mysore was charged before the Sessions Court with shooting dead the city businessman, Prem Ahuja on April 27 last '59 in the bedroom of the latter's residence on the fashionable Malabar Hill. The motive alleged was that Ahuja was on intimate terms with the 28 year-old English wife of the accused, Mrs. Sylvia Nanavati.

Nanavati had pleaded not guilty and the defence plea was that there was a struggle between Ahuja and Nanavati over the revolver and that during this struggle some shots went off killing Ahuja accidentally.

The one month long trial attracted wide interest, twentyfour witnesses were examined by the prosecution and 13, including Rear Admiral Katari, Chief of Naval staff, Mrs. Nanavati and Commander Nanavati himself, for the defence.

Immediately after the jury returned its verdict the judge said that he was going to make a reference of the case to the High Court.

Mr. Karl Khandalawala, Defence counsel wanted to speak on the question of reference but the judge remarked that he had already heard the counsel four days (during the latter's arguments) and he did not want to hear anything further on the question of reference. It is my view that the verdict is not reasonable, he said.

The Chief Public Prosecutor said that the verdict was "patently perverse and would vitiate the rule of law for ever."

Mr. Trivedi then requested the court to order that the accused be kept in police custody, instead of naval custody.

Mr. Khandalawala said that the application of the prosecutor would mean "persecution" and not "prosecution". At this stage there was an exchange of words between the two counsel and the judge remarked that he was really surprised at the way in which things were going on in this trial. "We

are supposed to be under rule of law," he said. Thereupon both the counsel apologised.

Mr. R. B. Mehta, Sessions Judge, continuing his summing up in the trial of Commander K. M. Nanavati on a charge of murdering Prem Ahuja, examined the evidence for and against the defence plea of a struggle and said the jury would have to consider whether the towel that was wrapped round the waist of Ahuja would normally or ordinarily remain in the same position after struggle.

The Judge said Miss Ahuja had stated that when she saw the body of her brother, a towel was wrapped round the waist. Sampat had also stated about the towel round the waist after Ahuja had fallen down. It was also in evidence that the accused banged the deceased twice against the door.

The question, therefore, was that when there was a struggle of an intensive nature whether it was probable that the towel which was wrapped round the waist would normally or ordinarily remain in the same position in the body. The accused had stated that during the struggle they were sometime in a crouching position also. The jury would consider whether the struggle or fight was a genuine one and not a mock fight or mock struggle as something in a dance, and whether it was probable that the towel continued to remain on the waist in spite of the struggle. The prosecution had contended that the towel round the waist contradicted the struggle story.

When considering circumstantial evidence, the jury had to consider all the circumstances together. The defence had laid some stress on the photograph of the bath-room as indicating signs of struggle. The judge said, from the photograph it could not be stated what the things were, for in the photograph sometimes different things looked alike, so there was no evidence of what the spots in the photograph were. No questions were asked from the photographer, who took the photographs after the body was removed to the bed. There were blood stains and when the body which was heavy was being taken, there would be some prints of the feet of persons who took the body. Therefore, the jury would have to consider whether the signs were of a struggle between the accused and the deceased.

In this connection, the judge referred to the statement of the accused that he would go and square up things with the deceased and the words of Mrs. Nanavati about the

revolver which Ahuja might have. Inquiries showed that Ahuja did not possess a revolver nor a licence for a revolver. But it was suggested that people who keep liquor also kept contraband revolver, but no instance was shown of any physical fight in which the deceased was concerned.

The Judge said that this was argument based on probabilities and he would leave it to the jury whether they were prepared to accept the statement of Commander Nanavati.

Mr. Khandalawala, referring to the scenes witnessed in the court said that the accused should not be held responsible for what had happened. How could the accused be penalised for the actions of the crowd he asked ?

Mr. Khandalawala said that there was a question of the accused running away or absconding if he was kept in naval custody. In the High Court there would be only points of law raised and there was no question of evidence. The trial was at end.

The Judge said that he had upto the last day not interfered in regard to the question of custody of the accused and he did not think it necessary now to interfere.

Mr. Trivedi—"We feel very strongly that naval custody has been abused in this case. We did not apply for police custody because we wanted to be graceful".

The Judge said if there was an abuse, Mr. Trivedi could apply to the court for cancellation of naval custody.

The Judge, then addressing Commander Nanavati, said, "The jury has found you not guilty by a majority of 8 to 1 under section 302 I.P.C. on the charge of murder as well as under section 304, part one, of the I.P.C. for the offence culpable homicide not amounting to murder.

Mr. Mehta then referred to the evidence of Anjani (Ahuja's servant) and the statement of the accused that when the door of the bedroom was opened Miss Ahuja was in front and that he (accused) spoke nothing and did nothing. The jury had to consider whether it was probable that the inmates would allow the stranger in those circumstances to leave the house unless they felt helpless. Therefore, Mr. Mehta said, the jury should consider the probability or improbability of the story of Anjani that the accused pointed the revolver at him.

The Judge then referred to the evidence of the Chowkidar Puransingh and the conversation which Puransingh alleged, he had with the accused and on the question of

discussion about the incident by the servants. While considering this evidence, the jury had also to consider whether the servants had been tutored and whether they were giving false evidence.

The Judge remarked—"I am unable to agree with the majority verdict as in my view the majority verdicts are perverse."

"I discharge the jury and under section 307 I. P. C., I am submitting the case to the High Court in the interest of justice".

REFERENCE

Mr. A. S. R. Chari, counsel for Nanavati, indicated his intention to raise, the objection when the case came up before Mr. Justice Shelat and Mr. Justice Naik in the form of a reference by the Bombay Sessions Court.

The Sessions Judge, Mr. R. B. Mehta, had referred the case to the High Court, disagreeing with the eight-to-one jury verdict that Nanavati was not guilty of murder or of the lesser offence of culpable homicide not amounting to murder.

As Mr. Chari rose to say that he had a preliminary objection to the reference their Lordship directed that the facts of the case be placed before the Court by the Government pleader Mr. Y. V. Chandrachud, and that the objection be raised later.

The hearing began about 12-30 p. m. and the rest of the day was taken up by the Government pleader in reading the evidence, giving the Court, the salient points of the case.

Special arrangements had been made to see that the Court room and the corridors was not over-crowded.

Commander Nanavati, who was than in naval custody I. N. S. Kunjali, was not produced in the Court.

The defence of the accused was that there was a fight between Ahuja and the accused when the former tried to grab the revolver and in that fight, bullets from the revolver went off accidentally.

In his 26-page order referring the case to the High Court the trial Judge, Mr. Mehta, said that the accused had shot Ahuja under grave and sudden provocation and was guilt of culpable homicide not amounting to murder. In his view, no reasonable body of men could have arrived at the verdict that was given by the jury in this case, having regard to the weight of evidence available. However, in view of Nanavati's "*excellent record of service and very good character,*" the Judge felt that "*a lenient view—a nominal or token sentence—will meet the ends of Justice.*"

The Judge, who discussed the evidence in detail in his reference order, said that the conduct of Nanavati immediately after the shooting incident was inconsistent with his stand, that bullets from his revolver had gone off accidentally. Mr. Mehta said that Miss Mamie Ahuja, sister of Prem Ahuja, who had entered Ahuja's bedroom on hearing the shots asked the accused what he had done, but he gave no reply. If that was an accident, one would expect him to say so to Miss Ahuja at that moment. This was a very significant circumstance against the accused, he added.

Her evidence showed that Ahuja was found lying with a towel wrapped round his waist. The Judge said that if there had been a struggle for the revolver, it would have been an intensive one and the towel would not have remained in its position.

According to the evidence of Ahuja's cook, Nanavati threatened him with the revolver while leaving Ahuja's bedroom after the incident. That also showed the immediate conduct of the accused, the Judge said.

After the incident, Nanavati had gone to the Provost Marshal, Commander Samuel, and told him that the accused thought that he had shot a man. The Judge said that there was no mention of any accidental firing.

The Judge discussed at length the medical evidence on the injuries found on Ahuja and said that *medical evidence was always a weak type of evidence* and had to be received with considerable caution. It was not proper to rely on theories of medical men unless they were based on inexorable laws of nature or by exact scientific precision against facts positively proved.

"It seems to me as a fair inference from the facts that Ahuja would have received the first bullet wound on the chest as he (the accused) entered the bedroom and then he (Ahuja) most probably turned his back towards the assailant when he received the head injury," the Judge said. If there was a struggle, he said, either of the fatal wounds on the chest or the head would make the struggle on the part of the injured man highly improbable.

PROCEEDING BEFORE THE HIGH COURT

Opening the proceedings before the High Court, the Government Pleader said that the shooting incident in the case occurred about 4 p. m. on April 27, 1959 at Ahuja's flat at "Jeevan Jyot" on Setalvad Road.

Mr. Chandrachud said that Nanavati and his wife introduced to the Ahuja family by a common friend in 1956. Mrs. Nanavati developed intimacy with Ahuja and according to her evidence, she was infatuated with him. When Prem Ahuja and his sister had been to Delhi in January, '59, Mrs. Nanavati was also there staying with her own friends. She returned to Bombay with Prem Ahuja and his sister by car. On the way they halted at Agra for a night and there Prem Ahuja told his sister of his intention to marry Mrs. Nanavati.

The Govt. pleader stated : Nanavati was on leave from April 18 to April 30. On April 27, when Nanavati and his wife were in their sitting room, he came to know from her that she no longer loved him and that she had been unfaithful to him. Coming to know that she was with Ahuja and was in love, he said he would go and settle the matter with him (Ahuja). Mrs. Nanavati warned him against that step and said that Ahuja might shoot him.

Some time later, Nanavati took his wife and children (as they had earlier planned) and left them at a cinema house. From there he proceeded to his ship and drew a revolver stating that it was needed for a road journey. He loaded the revolver on the ship and put it in an envelope. Returning ashore, he drove to Ahuja's office. On being told that Ahuja had gone for lunch, he proceeded to Ahuja's residence. While walking upto Ahuja's flat, he remembered his wife's warning that Ahuja might shoot him. He, therefore, returned to his car and took his revolver. He stated in his evidence that he carried the revolver for self-protection.

Ahuja's cook opened the door for Nanavati. After ascertaining that Ahuja was in, Nanavati entered his (Ahuja's) bedroom and closed the door behind him. Soon

after, three "noises" were heard in the bedroom, two of gunshots and the last of glass panes breaking.

The Govt. Pleader said that the time that had lapsed between Nanavati's entry into Ahuja's bedroom and his leaving it was of great significance. Reading extracts from the evidence, he said that, according to the accused, he was inside the bedroom from half a minute to one minute. Miss Ahuja said the time between the ringing of the door bell by Nanavati and his leaving the flat was about 15 to 20 seconds.

While Nanavati was leaving "Jeevan Jyot", the watchman of the building tried to stop him. Nanavati was alleged to have told the watchman that he had killed Ahuja for his intimacy with Mrs. Nanavati. The accused later went to the residence of Commander Samuel and told him that he (Nanavati) thought that he had shot a man.

Mr. Justice Shelat asked the Government pleader whether Provost Marshal was a police officer and whether a confession made to him would come within the Section 25 of the Evidence Act. (The section makes such a statement inadmissible in evidence).

The Government Pleader said that the Provost Marshal was not a police officer.

Mr. A. S. R. Chari told the Court that the Provost Marshal was a police officer.

Mr. Justice Shelet : Has the Provost Marshal powers of investigation ?

Mr. Chandrachud : No attempt has been made to bring that on record.

Mr. Chari : *Every dictionary describes the Provost Marshal as the head of the Naval Police.* There is a provision in the Indian Navy Act, about the office.

The Court then directed that a copy of the Indian Navy Act be produced with the rules framed under it.

The Government Pleader then referred to the various steps taken by the police for investigation and said that the accused was charge-sheeted on May 28, 1959. He told the court that the accused was sent to naval custody on April 30. He also drew the attention of the court to the nature of injuries caused to Ahuja and the medical evidence on them.

Dealing with the defence side of the case, the Government Pleader said that the main contention of the accused was that there was a struggle for the revolver, during

which some shots went off accidentally. Mr. Chandrachud read the evidence of the accused to show his conduct immediately after shooting incident and said that the accused had not mentioned to Anjani, Miss Ahuja or the watchman that it was an accident.

The Government Pleader pointed out that two naval officers who gave evidence for the defence only testified to the good character and marksmanship of the accused.

While drawing the attention of the Court to the conflicting medical evidence—given by Dr. R. M. Jhala, the Police Surgeon, for the prosecution, and Dr. A. V. Baliga, for the defence, the Government Pleader said that the “*struggle*” did not appear to be so much in the bath-room as it was over the evidence of the two doctors.

The Government Pleader, stated that the nature of appreciation of the evidence in the case by the jury would perhaps have been different if the trial Judge, Mr. R. B. Mehta, had told the jurors of the burden that lay on the defence to prove its theory of accidental shooting.

Mr. A. S. R. Chari, Counsel for Nanavati, raised a preliminary objection to the proceedings, but, after some discussion, said that he would not press the point.

Objections to the reference—

At the resumed hearing of the Ahuja murder case Mr. Chari raising a preliminary objection, said that the reference of the case by the Sessions Judge was not maintainable. He contended that when two views were possible on the evidence and if the jury accepted one of them, it was not competent for the Judge to hold that the verdict was perverse merely because he held the other view. To make a reference of a case to the High Court under Section 307 Cr. P. C.; it was required that the verdict should be one which no reasonable body of men could have arrived at and was manifestly wrong. The trial Judge should also come to the conclusion that the ends of justice required the reference of the case of the High Court, Mr. Chari added.

He submitted that in the case of a reference, the High Court must first satisfy itself whether the verdict was perverse and this should be done on the basis of the order of reference. If the High Court came to the conclusion that the verdict was perverse, it could then decide the case, exercising its powers as an appeal court. After discussion for some time on the authorities on the point, Mr. Chari

said that he would not press the objection at this stage, nor would he abandon it.

Mr. Chari pointed out that the Trial Judge had described the verdicts of the jury on both the murder charge (Section 302 I. P. C.) and the lesser offence of culpable homicide not amounting to murder (Section 304 I. P. C.) as perverse. But in the order of reference, the Trial Judge had stated that in his opinion the accused was guilty under Section 304. This implied that the Judge agreed with the jury verdict on the charge under section 302 and that verdict was, therefore not perverse.

Government Pleader's Arguments :

Mr. Chandrachud, replying to the point, maintained that the reference of the case to the High Court was in order. If, on considering the entire evidence and on application of his judicial mind, the trial Judge came to the conclusion that no reasonable body of men would give such a verdict and that the ends of justice required its reference to the High Court was in order. If, on considering the entire evidence and on application of his Judicial mind, the trial Judge came to the conclusion that no reasonable body of men would give such a verdict and that the ends of justice required its reference to the High Court, then it was a proper reference, the Government Pleader said.

He said that when the jury returned a verdict of not guilty under the charge of Section 302, I. P. C. it was not perverse at that time, because it was still open to the right decision. When the jury gave the verdict of not guilty under section 304, I. P. C. also, it would lead to only one inference that jury was of the view that the accused was not guilty of either offence and the defence plea of struggle for a revolver was well-founded. The Judge held this to be perverse.

The Government Pleader contended that while the High Court had the benefit of the opinion of the trial Judge that the accused was guilty under Section 304, I. P. C. that opinion, however, did not limit the scope of the reference to that charge alone. It was open to the High Court to consider whether the accused was guilty on the murder charge also.

Mr. Chandrachud, said that in a reference case, the High Court would not normally interfere with the verdict

of the jury unless, on a consideration of the entire evidence, it found the verdict to be perverse. If, however, there were material misdirections or non-directions in the charge of the trial Sessions Judge to the jury, the verdict was vitiated and the High Court would not attach any weight to such a verdict, he said.

The Government pleader asserted that once "*a competent reference*" was made to the High Court, it could set aside the verdict of the jury merely on the ground of misdirection or non-direction materially affecting the decision of the Jury. If there was no mis-direction or non-direction, the High Court could then consider whether the verdict of the jury was perverse or not.

Mr. Chandrachud argued that, in the present case, there had been a number of instances of misdirections or non-directions "*fatally affecting the prosecution case*", despite the great care that the trial Judge had taken to bring all salient points in his summing-up. One such instance of non-direction which vitiated entire proceeding was that there was no direction in the whole charge, either directly or indirectly, with regard to the burden of the defence theory of accidental shooting. Normally, the burden of proof as to the guilt of the accused was entirely on the prosecution. But, when the accused took shelter behind an exception provided under Section 80 I.P.C. as in the present case (accidental shooting), the burden of proof of that theory was on the accused. The trial Judge had not mentioned this point at all in his charge to the jury, if the jury had been told of this burden on the evidence, the jury would have been different.

Mr. Chandrachud said that the evidence clearly showed that the accused had a strong motive, had loaded the revolver immediately on receiving it, hunted out Ahuja and was in Ahuja's bedroom only for half to one minute.

The Government Pleader, who argued the case for the third day before Mr. Justice Shelat and Mr. Justice Naik, said that the jury verdict would, perhaps, have been different if the trial Judge Mr. R. B. Mehta, had not "*abdicated his jurisdiction*" and given a proper direction to the jury on the applicability of different legal provisions to the present case.

Mr. Chandrachud said that there were 15 infirmities in the trial Judge's charge to the jury, which materially affected the prosecution case. He contended that these

defects in the charge entitled the High Court to interfere with verdict of the jury.

At the resumed hearing Mr. Chandrachud said that the trial Judge had erred in leaving it to the Jury to decide whether Exception 1 to Section 300 I.P.C.—which reduced the offence to culpable homicide not amounting to murder if committed under a sudden and grave provocation—was applicable to the present case.

The Government Pleader said that the defence adopted by Nanavati was entirely inconsistent with the theory of the offence being committed under a sudden and grave provocation. The accused had enough time to reflect and the evidence showed that, in fact, he had reflected after coming to know about his wife's intimacy with Ahuja. In such circumstances, *it would be a case of revenge and not provocation*, he added.

He contended that mere information given by wife to her husband about her infidelity did not amount, in law, to a sudden and grave provocation and the trial Judge ought to have given a direction to the jury in respect of this law point in his summing-up. On the other hand, the Judge had directly charged the jury that such information constituted a sudden and grave provocation and had asked them to consider whether that exception applied to the case.

The Government Pleader said that another defect in the summing-up of the trial Judge was that his direction to the jury on the application of Section 80 I. P. C., under which the defence had taken the plea that it was an accidental shooting, was *"inadequate and misleading."* The Judge had, in fact, surrendered his jurisdiction, he added.

Under Section 80, nothing was an offence which was done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with the proper care and caution.

It is essential to place before the jury an alternative which would allow the jury to express its sympathy.

Mr. Chandrachud said that the trial judge had directed the jury that the evidence of two doctors—Dr. R. M. Jhala, the police Surgeon and prosecution witness, and Dr. A. V. Baliga, a defence witness—on the point whether the injuries on Ahuja could have been caused during a struggle, was *"inadmissible"*. harm to the prosecution case, he said.

Dr. Jhala had said that the injuries on Ahuja could not have been caused during a struggle and had given his reasons for that opinion. But Dr. Baliga stated that they could be caused during a struggle. The proper course was for the Judge to place the evidence of both doctors before the jury and to warn them of the infirmity attached to any "opinion evidence" like these. Mr. Chandrachud said that the very nature of injuries excluded the "struggle" theory. He pointed out that the Judge was in error in telling the jury that the nature of injuries would be identical in the case of an accident or a deliberate act and that, the jurors need not go into the nature of injuries.

The Government Pleader said that the evidence of medical men, which had been shut out to the jury, was actually admissible and was now available to the High Court by way of additional evidence. That fact alone entitled the High Court to interfere the jury verdict, he added.

The trial Judge had told the jury that the case completely rested on circumstantial evidence. Mr. Chandrachud said that this was not correct, because the extra-judicial confession allegedly made to the watchman of Ahuja's building by the accused was direct evidence. If the jury had been told this, then the test of corroboration to applied to that evidence would have been different, he added.

The Government Pleader said that the trial judge had told the jury that no one challenged the marksmanship of the accused. That was also not correct. The prosecution case was that the accused was bad in marksmanship and that explained the haphazard firing. The defence evidence about the marksmanship of the accused had been seriously challenged by the prosecution in cross-examination, he added.

The admitted facts in the case were that the accused trespassed into the bedroom of Ahuja without permission abused him, raised his (the accused) hands to thrash him, whipped out a revolver which he himself had loaded and then kept his fingers on the trigger. Assuming these were true, they were not lawful purposes and he had taken the revolver for committing an offence without proper care and caution. Having been warned by his wife that Ahuja might shoot him, the accused took the revolver not for self-protection but to have a fight.

In the face of these facts, Mr. Chandrachud asserted, there was no scope for the application of Section 80 to the case. The circumstances clearly showed that there could be no plea of accident at all. It was clearly the duty of the trial Judge to direct the jury that conditions for the applications of Section 80 were not satisfied in law. He had abdicated his jurisdiction to the jury, Mr. Chandrachud stated.

Yet another defect in the trial Judge's summing-up was that he had not explained to the jury Section 299 I. P. C. which defined culpable homicide, Mr. Chandrachud pointed out. In a case of murder, the offence was reduced to culpable homicide not amounting to murder in two circumstances 1) when the offence was committed under a sudden and grave provocation and 2) when the intention of the accused was not to kill the other person. The trial Judge had concerned himself only with murder and the first circumstance, but did not deal with the second circumstance at all.

The jury might have felt that the offence was not committed under a sudden and grave provocation and at the same did not perhaps want to hold him guilty of murder.

Government Pleader, Mr. Y. V. Chandrachud, concluded his four-day argument, his main contention being that several misdirections and non-directions and "reception of evidence" by the trial judge had vitally affected the prosecution case to "back out from the intended—riage" (with Mrs. Sylvia Nanavati). The second inference, according to one of the letters, was that "Mrs. Nanavati had made up her mind to leave the martial home". From this it was difficult to accept the defence theory that it was only on April 27 last '59 that Nanavati came to know for the first time of her intimacy with Ahuja. The third inference was that with the feeling she had towards Ahuja, she would never have dissuaded Nanavati from meeting Ahuja, as the defence sought to put it.

Mr. Chandrachud said that, from the letters dated May 28, 1958, March 19, (presumably of 1959) and April 17, 1959 she appeared to be extremely anxious that the matter should be discussed and finally decided. The letters certainly did not lend support to the defence theory that what Nanavati heard on April 27, (the day of the incident in which Ahuja lost his life) from his wife at their residence at 1 p. m. was a "sudden disclosure" It was possible that the unfor-

fortunate husband was aware even prior to that day that something was wrong in his home.

He contended that the letters were of "*extreme infatuation*" and if the husband (Nanavati) had offered to go to Ahuja to settle the matter with Ahuja, it was highly unlikely she would have dissuaded Nanavati from doing so.

NANAVATI-COUNSEL'S ARGUMENTS

Counsel for Commander K. M. Nanavati, told the Bombay High Court that the only question for the Court to consider was whether the trial judge at the City Sessions Court was right in holding the jury verdict perverse.

Mr. A. S. R. Chari, Counsel for the accused, contended before Mr. Justice Shelat and Mr. Justice Naik that the case having come up before their Lordships on a reference by the trial judge, Mr. R. B. Mehta, under Section 307, Cr. P. C. the primary issue for them to consider at this stage was not whether the accused was guilty or innocent.

Mr. Chari said the trial judge's reference of the case to the High Court, disagreeing with the jury verdict, signified a "backdown" of the judicial machinery under the system of trial by jury, since the rights of the parties in the present case had not been adjudicated by the trial court and no judgement given acquitting or convicting the accused, no party could claim to be aggrieved by the order of reference by the trial judge.

The High Court had now been called upon to resolve the crisis in the judicial machinery arising from a "deadlock between the judge and the jury," as it were. The law did not give the parties, the State or the accused, the right to be heard. Each party was to assist the High Court to answer the only question whether the judge was right in making the reference.

The test to be applied to the reference under Section 307 Cr. P. C. was whether the verdict of the jury, (holding the accused not guilty of murder or of the lesser offence of culpable homicide not amounting to murder, by a eight to-one majority, was such that no reasonable body of men could arrive at. If the High Court found that the verdict was one that a reasonable body of men could arrive at it must accept the verdict.

Mr. Chari stated that the Government Pleader had argued that the reference be converted into an appeal by

the State in disregard of the well-established principle applicable to jury trials. The question of misdirections and non-directions by the Sessions Judge in his summing-up to the jury, had been dealt with at length by the Government Pleader. This question could be relevant only after the High Court had arrived at its own conclusions on the issue of perversity of the verdict.

Counsel for the accused stated that if the jury verdict was found not to be perverse, no other question would survive. It would be futile to suggest that the High Court, without being satisfied on the question of perversity, should proceed to interfere with the verdict on the assumption that there were misdirections in the Judge's summing-up. That was to do precisely what the law did not contemplate, namely, to treat the reference as an appeal.

He said that trial judge had failed to refer in his summing-up to the jury to a very important aspect of the prosecution evidence. It related to the letters written by Mrs. Sylvia Nanavati, wife of the accused, to Prem Ahuja.

Mr. Chandrachud said that the Judge had not even told the jury of the existence of the letters. The jury was not therefore, in a position to appreciate the "inferences which arise from the letters". The letters formed an important piece of evidence because they were capable of supporting three inferences, he said.

Mr. Chari, in the course of his arguments on the fifth day of the hearing, pointed out that there was a piece of evidence which conclusively proved the defence contention that there was a *struggle* between Nanavati and Ahuja for a revolver which resulted in Ahuja's death by accident. The abrasions on Ahuja's shoulder after he was banged twice by Nanavati against the door of the bath-room in Ahuja's flat on April 27, last '59 had been left unexplained by the prosecution, Mr. Chari said.

Mr. Chari amplified his unfinished arguments on the scope of a reference by a trial judge. He said that the Supreme Court had authoritatively confined the scope of a reference.

He said that if the facts and circumstances of a case were such that a reasonable body of man could arrive at one conclusion or the other, the Sessions Judge or the High Court was not competent to change the jury's verdict.

He said that according to a Supreme Court decision, since the accused had a right to trial by jury, the

benefit of jury verdict must be given to the accused. If the Court arrived at a decision that any reasonable body of man could have arrived at then the reference must fail.

Mr. Chari stated that in a reference it was the trial Judge who challenged the verdict of a Jury. In an appeal after conviction or acquittal it was the State or the accused, whoever was aggrieved, that challenged the decision. The circumstances in a reference were entirely different. Could it be open to the Judge, who initiated the challenge, to say that he misdirected the jury and, having so misdirected, he should be allowed to assail that verdict, he asked. That would certainly be impermissible. And what was impermissible for the Judge was also impermissible for the parties, be it the state or the accused he said.

Mr. Chari stated that he would not for a moment contend that misdirections. If any, should be ignored by the High Court. They could be taken up for consideration but only after a finding was arrived at on the question of perversity of the jury verdict. The High Court might then dispose of the case of recording the conviction or acquittal of the accused after giving due weight to the opinion of the judge and the jury.

Referring to the charge of the Government pleader that the trial judge's summing-up to the jury was vitiated by misdirections, Mr. Chari said that contention was erroneous and groundless.

Counsel for Nanavati said that one of the misdirections alleged was that the judge had failed to mention in his summing up the only piece of evidence against the accused, namely a confessional statement purported to have been made by him to the Chowkidar of the building in which Ahuja was staying. Even this alleged confessional statement could only be circumstantial evidence, Mr. Chari said.

Mr. Chari next referred to the Government Pleader's contention that the judge had not pointed out to the jury the burden that lay on the accused to prove his special plea of accidental firing. He said that if the accused chose to rely on the circumstances established in the prosecution evidence, himself entered the witness box and made a statement in support of his theory of struggle with Ahuja, called witnesses to establish the contention that Ahuja's

death was accidental and not the result of any deliberate attempt, the burden of proof on the accused was rendered irrelevant.

Mr. Chari said whether the special plea of accident put in by the accused was established or not could arise only if the prosecution had succeeded in proving beyond responsible doubt that the offence had been committed and that the killing was intentional. In the prosecution evidence there was clear proof that Ahuja had received a vertical abrasion on the shoulder. It was not a case where, on the prosecution's own evidence, the probability of a struggle was ruled out.

Counsel for Nanavati stated that it would have been a serious misdirection if the judge had said that Nanavati had to establish his innocence and prove beyond reasonable doubt that the death was the result of a struggle. Such a direction would be tantamount to asking the jury to reject the defence evidence.

He next dealt with a question whether in the circumstances established in this case the judge was right in asking the jury to consider whether the death was the result of a sudden and grave provocation. Mr. Chari contended that grave and sudden provocation and its sufficiency to prevent the offence from coming within the scope of murder were questions of fact by virtue of the explanation contained in Section 309 I. P. C. on which the jury was competent to draw its own conclusions. The judge, in his summing-up, had precisely stated this, Counsel said.

The summing-up in any case, could not be said to have been vitiated by misdirections and non-directions, as contended by the Government Pleader, Nanavati's counsel said.

Mr. A. S. R. Chari, counsel for Nanavati, in the course of his daylong arguments, referred to the various points raised by the trial judge, including medical evidence, in his summing-up. Mr. Chari said that while there were no misdirection or non-directions, the judge had been at pains to indicate to the jury clearly the circumstances which militated against the defence plea that Ahuja's death was accidental.

Resuming his arguments on the sixth day of the hearing, Mr. Chari said that the Government Pleader, Mr. Y. V. Chandrachud had contended that there had been a misdirection in the judge's summing-up on the issue whether

the provocation that the accused had (on hearing from his wife of her intimacy with Ahuja) was sudden and if it was such as to deprive him of self-control. Mr. Chari said that the words "*grave and sudden*" were common words, in popular usage, with clear import and it was unnecessary to contend that the trial judge should have defined to the jury what they meant. These words had not been defined anywhere in law. Whether there had been grave and sudden provocation was a question of fact and not of law. It was for the jury, as Judges of facts, to apply their minds to the question.

Mr. Chari next referred to the Government Pleader's contention that the trial judge had withdrawn medical evidence from the jury. He said that the evidence, on the contrary, had been fully explained by the judge to the jury. The judge had even pointed out to the jury that the evidence of the Police Surgeon ruled out the possibility of a struggle between Nanavati and Ahuja, while Dr. Baliga, a defence witness, had stated that the injuries found on Ahuja could have been caused in a struggle. The judge had gone to the extent of indicating that his own preference for the evidence of the police Surgeon, Dr. Jhala, who had examined the wounds, which Dr. Baliga had not done.

The trial Judge had also explained to the jury, and rightly too, that the jury must exclude from its consideration opinions expressed by medical experts on matters outside the field of their specialised knowledge. Medical experts could not be regarded as judges of facts and their opinions on technical matters could be made use of by the jury only as expert assistance to help it come to its own conclusion on facts of the case, Mr. Chari emphasised.

He further contended that the injuries indicated the probability of a struggle between Ahuja and Nanavati. He showed the Court anatomical transparencies, Ahuja's skull cap and the bullets recovered from the body of Ahuja and from the bath-room of Ahuja's flat. It was for the jury to decide whether there could be a struggle between two persons at a distance of 18 inches from each other—the distance indicated in the evidence of the Police Surgeon as that from which the wounds could have been caused.

The next point referred to by Mr. Chari was the plea of accidental death. He stated that the judge had referred to the conduct of the accused soon after the incident in Ahuja's bath-room.

According to Miss Ahuja, she entered the room on hearing gunshots and seeing Nanavati with a revolver in his hand and her brother in a pool of blood asked the accused : "What is this ?" Nanavati was stated to have given no reply.

The trial judge, in his summing-up had asked jury to consider whether the accused would not have told Miss Ahuja that it was an accident that had resulted in her brother's death, if that was so. The judge had cited this as a strong circumstances against the accident theory advanced by the defence.

The defence counsel argued that the judge had pointedly asked the jury to consider whether the accident story could be "reasonably true". He also told the jury that a more struggle of a fight did not exempt the accused from criminal liability. Only an accident could exempt an accused from such liability. The judge had clearly indicated that the accident plea might have been an afterthought and that there might not have been a struggle between Nanavati and Ahuja.

The jury might not have accepted the accident plea but still might have come to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt, while returning a verdict of not guilty. Mr. Chari said. A jury verdict covers the "*whole specturm from a hesitating doubt to the flaming conviction of innocence*", and who could say how the jury returned the verdict it did, he asked.

Mr. Justice Shelat and Mr. Justice Naik at the Bombay High Court who heard the Ahuja murder case expressed the view that these were some misdirections in the summing-up of the trial judge of the city Sessions Court and called upon the Government Pleader to argue the case on the merits of the evidence.

A preliminary point had been raised on behalf of the accused in the case, Commander K. M. Nanavati, that before examining the evidence in the case, the High Court should first decide whether the jury verdict, exonerating Nanavati from the charges of murder and culpable homicide not amounting to murder, was perverse. The trial judge, Mr. R. B. Mehta, had held the verdict to be perverse and had referred the case to the High Court.

The argument on behalf of the State had been that once the High Court was seized of the matter, it could

go into the evidence if there were misdirections or non-directions. The Government Pleader, Mr. Y. V. Chandrachud, had pointed out the various misdirections and non-directions which, he contended, had vitiated the jury verdict.

When Mr. A. S. R. Chari, counsel for Nanavati, concluded his reply to the "*misdirections*" pointed out by the Government Pleader, Their Lordships said that they felt that there were misdirections and asked Mr. Chandrachud to argue on the evidence. The Court also told him that, even if there were mis-directions, *it would have to give due weight to the opinion of the jury.*

Mr. Chandrachud, however, wanted to reply to certain points on misdirections raised by Mr. Chari, before he made his submission on the evidence. Mr. Chandrachud had not concluded his reply on misdirections when Mr. Chari, counsel for defence resumed his argument and maintained that the case was based on circumstantial evidence and "none-other". He submitted that the alleged confession of the accused to a watchman of Prem Ahuja's building was not direct evidence to the crime, but was a direct evidence to a circumstance of the case.

One of the grievances of the State appeared to be that the trial Judge had not even told the jury, in his summing-up, of the existence of Mrs. Sylvia Nanavati's letters to Ahuja. Mr. Chari said that Mrs. Nanavati gave evidence on those letters on October, 13, 1959, and immediately after that the arguments began. During the arguments, the public prosecutor had made references to those letters at length. These were fresh in the minds of the jurors when the trial judge began his charge to the Jury. It, therefore, did not matter very much if the judge had not specifically referred to her letters in his summing-up. It was not necessary for the judge to place every obvious inference before the jury, he added.

Mr. Chari referred to the prosecution challenge to the marksmanship of Nanavati and said that the accused was not putting a false claim to it. Mr. Justice Shelat inquired why Commodore Nanda, who had deposed to marksmanship of the accused was called in as a defence witness. Mr. Chari, after some discussion, conceded that it was unnecessary for him to have been cited as a defence witness.

Mr. Chari said that on a fair reading of the summing-up, there could be found no serious misdirections, despite "an unhappy expression here or an unhappy omission there". The summing-up on the whole was in the direction of a conviction, Mr. Chari concluded.

Mr. justice Shelat then called upon the Government Pleader to address the evidence.

GOVERNMENT PLEADER'S ADDRESS

Mr. Chandrachud first wanted to reply to the points raised by Mr. Chari. Mr. Chandrachud said that *under Section 105 of the Evidence Act, "the burden of proving the defence plea that Ahuja was killed in accidental shooting was on the accused. The accused had to prove his theory by cogent evidence and by showing a "preponderance or probability".* It was not enough merely to throw a doubt on the prosecution case. He said that sudden provocation was one which was pursued and acted upon and the offence must have been committed immediately after the provocation. If there was time enough for reflection by the accused before committing the offence, it would show that he had the intention to commit the offence, and that the offence was not committed on account of provocation. The implication of grave and sudden provocation should have been explained by the judge to the jury, he added.

The Government Pleader maintained that medical men were competent to give their opinion as to whether the injuries on Ahuja could be caused in deliberate or accidental shooting. "They give their views on a study of the nature of injuries using their expert knowledge," he said. The trial judge was in error in withdrawing this evidence from the jury, he stated.

The arguments had hitherto been on a preliminary objection raised on behalf of the accused. Commander K. M. Nanavati on the scope reference of the case to the High Court by the trial judge of the City Sessions Court as well as on the contention of the state that material misdirections in the judge's summing-up had vitiated the jury verdict.

The Government Pleader, began his arguments on the evidence after the High Court had expressed its view that there were some misdirections in the trial judge's summing-up.

Inviting the Court to "reappreciate" the evidence, Mr. Chandrachud urged that the "jury verdict should be given

no weight at all, because the verdict of a misdirected jury has no weight" in the eyes of the law, therefore, the jury verdict did not exist and "we have to forget that there was a jury trial" he contended. "When pointed out misdirections, the distinction between a reference and an appeal disappears" he said.

Mr. Justice Shelat said, that the Court would have to give due weight to the opinion of the jury even if there were some misdirections in the judge's summing-up.

The Government Pleader replied that he would seek to satisfy the Court that the verdict of the jury was perverse and thus undertake "a greater burden than is legally binding upon me" to show that the verdict should not be given any weight.

Mr. Chandrachud dealt at length with the evidence of Puran Singh, the 'watchman of 'Jeevan Jyot' to whom the accused was stated to have told that he had killed Ahuja, because he (Ahuja) had "connection" with Mrs. Nanavati.

He submitted that Puran Singh's evidence suffered from no infirmity. He had given a consistent story. He was not hostile to the accused, nor was he, being a mere chowkidar of the building which Ahuja did not own, interested in the prosecution or the defence. In a way, he was an independent witness who had no axe to grind and no reason to be willing to be tutored, Mr. Chandrachud said.

The defence contention was that Puran Singh had conspired with Anjani and Deepak, servants of Ahuja, and manufactured the story of Nanavati's confession. If there was any such conspiracy, Anjani's evidence would have been in support of Puran Singh's story. But, Anjani, on the contrary, had deposed that he did not hear the conversation between Nanavati and Puran Singh in which the accused made his confessional statement. The defence suggestion of conspiracy was self-destructive because the evidence of Anjani was not in "line with" that of Puran Singh, he said.

The Government Pleader asked the Court to take into account the fact that Puransingh had no opportunity of being in contact with the servants before he told the police of his conversation with the accused on the day of the alleged offence. Even Miss Ahuja who might be regarded as an interested witness, could not be said to have tutored

Puran Singh because it was in evidence that he was drugged under doctor's advice that evening, Mr. Chandrachud said.

The conduct of the accused showed that it was highly probable that Nanavati himself told Puran Singh of his having killed Ahuja because of his wife's intimacy with him, when the watchman asked him, why he had killed Ahuja. Nanavati was a man of honour, with the courage of his conviction. He had a grievance against Ahuja, whom he killed and he was not afraid of the consequences at the time of the incident, Mr. Chandrachud said.

The Government Pleader contended that the evidence showed that the statement of the accused to Puran Singh amounted to extra-judicial confession. It was not safe to act solely on uncorroborated extra-judicial confession and convict an accused person, as it suffered from several infirmities. It was, therefore, necessary to find corroboration from other evidence. Mr. Chandrachud submitted that the evidence on record lent support to the extra-judicial confession and that he would point out the supporting evidence while analysing the evidence in detail.

Mr. Chandrachud then dealt with the evidence of police constable Madhukar R. Desai at the Government House Gate. His evidence was that the accused came to him between 4 p. m. and 5 p. m. on that day and asked him to the nearest police station. The Government Pleader pointed out that the anxiety of the accused immediately after commission of the alleged offence was not to go to the aid of the injured person, but to go to the police and surrender himself. That was the conduct of the accused immediately after the incident. He did not speak of any accident to the constable. His conduct there was not consistent with his plea that Ahuja was killed in an accident but consistent with the fact that having committed the offence, he wanted to report to the police.

The Government Pleader referred to the evidence of Provost Marshal M. B. Samuel of the Indian Navy and said that before going into his evidence, he wanted to satisfy the Court that the evidence of the Provost Marshal was not hit by Section 25 of the Evidence Act. (*The Section makes a confession made to police officer inadmissible in evidence*).

Mr. Chandrachud read provisions of the Indian Navy Act at length and said that the Provost Marshal had no power to arrest an officer like the accused, except on an

order from another officer of the Navy. The offence of murder of a civilian by a Navy man was to be tried not under the Navy Act but by a criminal court, he maintained. Mr. Chandrachud also said that the Navy Act did not confer powers of investigation on any person ; in any case, no such power had been given to the Provost Marshal. The accused wanted to report the matter to the police, possibly he was aware of the position. The Provost Marshal himself directed the accused to the police, if he had powers he would have put the accused under arrest. Mr. Chandrachud, therefore, maintained that the Provost Marshal was not a police officer within the meaning of Section 25 and his evidence was admissible.

The Government Pleader, Mr. Y. V. Chandrachud, told Mr. Justice Shelat and Mr. Justice Naik, that the conduct of the accused from the time he left Ahuja's flat till he reached the police head-quarters that evening was inconsistent with that of a person involved in an accident. His conduct also gave the support to the evidence of the watchman of Ahuja's building, according to whom the accused had made a confession to him.

Mr. Chandrachud remarked that the evidence of Provost Marshal Samuel of the Indian Navy, to whom the accused had reported the incident immediately after it had occurred, clearly showed that the accused was in a mood to confess what had happened and thereby gave support to the evidence of Puran Singh, the watchman of "Jeevan Jyot".

The Government Pleader said that the accused had told Samuel : *"I think I have shot a man."* *That man had seduced his wife and he would not stand it.* Samuel had made precise inquiries to find out what exactly had happened, but the statement made by the accused to Samuel did not even have a suggestion that Ahuja was killed in an accident. The accused had an opportunity to tell him that it was an accident. The Government Pleader maintained that the accused who was in a mood to confess, had told Samuel what he wanted.

The conduct of the accused was consistent only with that of a person who, having achieved what he wanted, wished to make a confession of it, he said.

Mr. Chandrachud contended that the evidence also established that the accused was not in a dazed condition as Samuel had stated. If the accused was in a dazed state, Samuel would not allow the accused to drive to the police

head-quarters in his own car. The fact that Samuel asked him to go to Deputy Commissioner Lobo was inconsistent with Samuel's evidence that the accused was in a dazed state.

When Samuel stated in cross-examination that the accused also mentioned to him the word "fight", Mr. Chandrachud said, he was "embellishing" his story and deviating from truth. If the word "fight" had been mentioned by the accused, it was strange that it would not have been communicated by Samuel to Deputy Commissioner Lobo.

Mr. Chandrachud argued that the fact that Nanavati gave a bunch of keys to Samuel to be handed over to Mrs. Nanavati showed that the accused was certain in his mind that he would not return early. The anxiety was then to own what had happened and not consistent with that of a person involved in an accident. Samuel was not hostile in his examination-in-chief, but he tried to improve his story in his cross-examination, he added.

The evidence of Deputy Commissioner, Lobo clearly showed that the accused was talking coherently and in a normal manner. According to him, Samuel had told him that the accused was proceeding to the police head-quarters for surrendering himself. There was no cross-examination on these points. The Government Pleader said that the Deputy Commissioner asked his junior officers to arrest the accused and start an investigation. The manner in which the police officer acted left no doubt that the accused had committed an offence, Mr. Chandrachud maintained.

There were no cuts or tears on the clothes of the accused and this was admitted by the accused himself later. The Government Pleader said that the evidence of the Deputy Commissioner was true and unshakable. If the accused had mentioned to Samuel that it was an accident, there would be no offence and Samuel would not have advised him to report the police.

The conduct of the accused, in the evidence of the constable at the Raj Bhavan gate. Provost Marshal Samuel and Deputy Commissioner Lobo clearly pointed out that the accused was not in a dazed state and that he was in a mood to make a confession, Mr. Chandrachud argued.

The Government Pleader then dealt with the evidence of the officers of I. N. S. Mysore. He pointed out that there was an alteration in the entry in the ship's small

Arms Register showing the date on which the revolver was issued to Nanavati. He would not, however, pursue the point and accept the evidence that the revolver was issued on April 27, 1959.

The conduct of the accused in obtaining the revolver on a false excuse and loading it on the ship itself showed a clear deliberation on his part, he said. The revolver was issued without a holster and the bullets without a case, and there was no evidence to show that the accused had asked for any. That indicated that they were meant for "ready use". It also excluded the theory that the revolver was taken for committing suicide, because he would not draw six cartridges if he required them for suicide.

The evidence of Lt. Commander Cooper said that the issue of the revolver to the accused was "absolutely irregular" and Cooper was trying to justify the issuing of the revolver on the basis of certain non-existent rules. Cooper was inconsistent in his evidence. The evidence also showed that this was the first time that a revolver had been issued to an officer for a private purpose. The Government Pleader asserted that there was no rule sanctioning the issue of a revolver for a private purpose and that Nanavati obtained it "not rightfully". Possibly he was aware of that.

The evidence of Cooper showed that the accused, while on the ship, discussed the affairs of the ship with an officer and exchanged greetings with Cooper. These indicated that on leaving the ship he drove to Ahuja's office consciously. "It was pre-determined", Mr. Chandrachud said. A man who had done a serious of acts consciously now said that the pulling of trigger was unconscious. Now explanation was forthcoming as to how he happened to pull the trigger unconsciously.

The Government Pleader next dealt with the evidence of R. S. Taneja, Sales Manager in the office of Prem Ahuja. Taneja had deposed that the accused had called at the office in the afternoon of April 27, 1959, to inquire if Ahuja was there. The witness had stated in his evidence that he had not seen if Nanavati was carrying a packet (containing the revolver) in his hands when he came to Ahuja's office. The accused himself had stated that he had not taken the packet with him inside the office but he had left it in the car.

Mr. Chandrachud submitted that whether Nanavati carried it with him or not to Ahuja's office did not affect

the prosecution contention that the accused had made up his mind to shoot Ahuja. The circumstances showed that there was an unbroken link of conscious actions on the part of the accused, who pursued his "prey and destroyed it". The conduct of the accused was such that he was not afraid of the offence and later owned it, when the crime was committed, in his statements to Puran Singh and Samuel.

Analysing the evidence, the Government Pleader said that the evidence of Ahuja's sister, Miss Mamie Ahuja, and his servants clearly showed that Ahuja was killed in accident during a struggle for a revolver was "an after thought".

At the resumed hearing, Mr. Chandrachud dealt with the evidence of Miss Ahuja and said that he had given a consistent story throughout. Contradictions brought out in her evidence were in the nature of "omissions, pure and simple", and, therefore, no contradictions at all. Where they were contradictions, they were in the nature of a "change in the syntax".

Even according to the defence, the Government Pleader said, the time between the ringing of the door-bell (by the accused) and the hearing of the noises by Miss Ahuja was not more than 50 seconds. According to the statement of the accused, it was between half a minute. Miss Ahuja's evidence showed that the accused did not answer her query as to what he had done. The conduct of the accused immediately after the incident was inconsistent with the defence theory of accident. "Any argument on accident is clearly an after-thought", he added.

Nanavati, "who is a hero of fronts and a man known to be cool in times of crisis," would certainly have mentioned it to Miss Ahuja if it were an accident, Mr. Chandrachud said. He owed an explanation. He would have called for medical help. He did not do so because he did not want medical aid to come to the succour of the dying man and he wanted to kill that man. He was more anxious to go to the police and report. That was the way his mind had been working then.

The integrity of Miss Ahuja's evidence had been challenged on two grounds: (1) That she denied the marriage of her brother; and (2) that she denied knowledge of her brother's drinking habits. Mr. Chandrachud said that even assuming that the alleged marriage of Prem

Ahuja was true, it was only a "run-away marriage" and his secret elopment might not be known to his sister on the other point, the Government Pleader said, normally a sister was not associated with her brother's drinking parties. Both the grounds on which the integrity of her evidence had been questioned had not been substantiated.

The Government Pleader told the Court that Miss Ahuja had stated in her evidence that a towel was wrapped round the waist of her brother when he was lying in the bath-room and on that important point she had not been cross-examined. Her evidence that her brother had told her at Agra in January, 1956 about his intention to marry Mrs. Nanavati also remained unchallenged.

No suggestion had been made to her by the defence on the point whether she heard any sound of any struggle or shout. In the event of any struggle, it would not have been a "silent struggle". Ahuja, who was in his own flat and had his three servants around, would have shouted out. No question had been put to her whether there were any signs of struggle in the bedroom or the bath-room.

The position of the chappals was not indicative of any struggle. It might be that Ahuja wanted to escape through the door in the bath-room opening to the hall, Mr. Chandrachud argued.*

The evidence of Miss Ahuja clearly established that the accused "made a quick work" and the brief time he was inside Ahuja's bedroom was incompatible with any theory of there being an argument between the accused and Ahuja and subsequently a struggle preceding the shooting.

The Government Pleader then analysed the evidence of Anjani Rappa, one of Ahuja's servants. He said that there were no contradictions on main points in the servant's evidence. Whatever they were, his evidence established the fact that the accused made a "determined hid at the bedroom" of Ahuja. He closed the door behind him on entering the bedroom, because he wanted to maintain secrecy on what he wanted to do there. In a matter of seconds, he came out "triumphantly", Mr. Chandrachud said. There was no time for any struggle inside the bedroom.

Anjani's evidence was consistent. Anjani also did not say that he had heard any sound of a struggle, nor was any suggestion made to him in that respect. His evidence indicated that shooting synchronised almost with the entry

of the accused into the room. He entered the room with determination to kill Ahuja and later walked out in "callous indifference" in the face of death. His own case was that he did not talk to anyone there.

Anjani's evidence established murder and excluded accident. If there was any struggle in the bath-room as alleged by the defence, the accused would have been seen coming from the bath-room. The evidence was that Anjani saw him standing in the bedroom. The Government Pleader said that there was no tutoring at all, if there were any, Miss Ahuja could have spoken of a dying declaration made by her brother and made Anjani an eye-witness to the offence. No such thing was done and that showed they spoke the truth, he added.

Anjani was also not cross-examined on his evidence that a towel was wrapped around the waist of Ahuja when he was lying in the bath-room. The Government Pleader asserted that the distance walked by Miss Ahuja and Anjani between the ringing of the door-bell and their hearing of the noise in the bedroom was identical and that provided "intrinsic corroboration" on the point of time and ruled out any tutoring.

Anjani did not say in his evidence anything about the alleged extra-judicial confession made to the Watchman of the building. In cross-examination, he only stated that he could not hear a part of the conversation between the accused and the watchman. The defence admitted that there was "some conversation" between them, but difference was what that conversation was. This also gave support to the argument that there was no tutoring at all.

Dealing with the evidence of Deepak Sampat, another of Ahuja's servants, Mr. Chandrachud said that his testimony corroborated the evidence of Miss Ahuja on the question of the duration of Nanavati's stay in the flat.

The evidence of Sub-Inspector Surve showed that no arms licence had been issued in the name of either Prem Ahuja or Miss Ahuja, the Government Pleader pointed out.

The testimony of the ballistic expert, Bhanagay, showed that three shots could not be fired in succession from the weapon in an accident. For a revolver of the semi-automatic type to be fired thrice, it required three distinct pulls on the trigger. No amount of pressure on the wrist of the alleged assailant in a grapple could exert pressure on the trigger finger, Mr. Chandrachud contended.

Mr. Chandrachud, who analysed the evidence of the ballistic expert and the medical evidence at length, said that the defence was based on "invented and fantastic details of a non-existent struggle".

Mr. Chandrachud said that according to the defence, Ahuja had held the wrist of Nanavati during a struggle in an attempt to prevent him from using the revolver. The Government Pleader contended that any amount of pressure applied on the wrist of the accused would not have brought enough force on the finger of Nanavati to pull the trigger. If the object of Ahuja was to prevent the accused from using the weapon, he would not have allowed the revolver being pointed towards him.

There was no reasonable hypothesis on which such a struggle could be conceived as having actually taken place. If at all it was a silent struggle, Mr. Chandrachud remarked. He visualised the various positions in which the accused and the victim could possibly have grappled with each other and said that by no stretch of imagination could a struggle have been possible and, as a result, three shots go off from the revolver accidentally.

The prosecution had, during cross-examination, suggested to the accused several times that there had been no struggle at all. The accused was given enough opportunities to explain how the accident had occurred. The evidence of the accused was that he did not know how the bullets went off. Mr. Chandrachud said that the tendency of the accused was to resist giving details of the struggle. On every "*Inconvenient detail*", the reply of the accused was that he did not know how it happened and that all happened suddenly and unexpectedly.

According to the accused, Ahuja loosened the grip on the wrist of the accused and subsequently slumped down after the first shot, Mr. Chandrachud said. The accused had explained how the subsequent shots had gone off.

Discussing the evidence of the Ballistic expert on the distance upto which powder marks could be seen on bullet injuries, Mr. Chandrachud said that it was for the court to appreciate the evidence of three persons on the point—the police surgeon, the ballistic expert (both prosecution witnesses) and Dr. A. V. Baliga, a defence witness—and ascertain the correct position. Each of them had put the distance differently.

The evidence of the ballistic expert was that, in a struggle, three bullets could not be released accidentally. The Government Pleader said that three distinct conscious movements of the trigger-finger were necessary to shoot thrice. Each pull must be accompanied by the release of the trigger. Mr. Chandrachud contended that even if pulling the trigger was an unconscious act, releasing the trigger was a conscious act. It was difficult to envisage that an unconscious act was alternated with a conscious act three times during the struggle, he said. *"Invented and fantastic details of a non-existent struggle"* had been given by the defence, he added.

The Government Pleader then dealt with the medical evidence and explained to the court the injuries on the body of Ahuja. A human skeleton was brought into the court-room to explain the chest injury on the body of Ahuja and to show where the bullet had been deposited in the body.

Mr. Chandrachud said that when Nanavati entered the bedroom, Ahuja was combing his hair in front of the dressing table. The accused appeared to have fired instantaneously on entering the room, and the bullet had hit Ahuja on the chest when he turned aside to see who had come into the room. The Government Pleader said that all the injuries on the left hand of Ahuja appeared to have been caused by one bullet.

Mr. Chandrachud then explained the nature of the gutter fracture on the head of Ahuja and said that it was the last injury to be caused. The injury had been inflicted from the back, the bullet grazing the head and then hitting the window pane. The defence case was that the injury could be caused from either direction.

The Government Pleader said that during the struggle, if there had been one, both men must have come very close to each other. It was a struggle for life and it was impossible to visualise a position where they would have been at arm's length from each other.

Analysing the evidence of the police surgeon, Dr. Jhala, Mr. Chandrachud said that the witness had made no dogmatic statements, had quoted well known authorities for his opinions and had categorically stated that the events in particular incident depended on the variable factors of each case.

ABUSIVE LANGUAGE

The Government Pleader complained against the abusive language alleged to have been used by defence counsel at the Sessions trial in reference to Dr. Jhala, and wanted the Court to "*utter a word of warning*" to prevent the pernicious and persistent practice" of lawyers. The Court agreed to look into the record of the case. Mr. A. S. R. Chari, counsel for Nanavati, rose to say that there appeared to be some misunderstanding on the matter and informed the court that some correspondence had passed between Dr. Jhala and Mr. Karl Khandalawala, who had appeared for the defence at the Sessions trial.

The testimony of Dr. A. V. Baliga, a defence witness in the Ahuja murder case, should not be relied upon as it was not based either on authority or on experience in handling bullet injuries, the Government Pleader, Mr. Y. V. Chandrachud, argued before the Bombay High Court.

He submitted that Dr. Baliga had ventured to offer his opinion on a subject which was beyond the "pale of his practice" unlike the Police Surgeon, Dr. Jhala, who had performed the post-mortem and had examined the injuries on the body of Prem Ahuja. The Police Surgeon's evidence should be accepted by the court, the Government Pleader urged.

Mr. Chandrachud analysed the evidence of Dr. Baliga at length and said that the opinion given by him must not be accepted by the court for several reasons. Dr. Baliga was admittedly not a medico-legal or a ballistic expert. He had never fired a revolver or any other fire-arm. He had not treated a single case of bullet injury during the seven or eight years preceding the day he gave evidence in the present case. He said that he had treated in all 12 cases of bullet injuries, but had maintained no record of them. It would not, therefore, be safe to rely on his mere word, the Government Pleader said. Dr. Baliga had performed post-mortem only in six cases during 14 years and that too not in medico-legal cases, but for academic surgical interest, he added.

The Government Pleader contended that Dr. Baliga had ventured to offer his opinion on a subject which was beyond the pale of his practice, regardless of the caution which circumspection demanded.

Dr. Baliga gave his opinion on the injury on the head of Ahuja after a study of description of the injury in the post-mortem report and by looking at the photograph of the skull. He gave that opinion without examining the gutter fracture on the skull and without knowing the depth of the fracture. Dr. Baliga relied for corroboration on a picture published in a text-book, but that picture, far from corroborating, was completely destructive of his opinion, Mr. Chandrachud maintained.

On the point as to whether there was a greater possibility of the head injury being caused from the front, Dr. Baliga abandoned his initial opinion and admitted later that a greater possibility was that the injury would be caused from behind, Mr. Chandrachud said. Dr. Baliga had to authority to cite or any personal experience of handling bullet injuries to support his view that the head injury could be caused by a rebounded bullet. In regard to the seriousness of the injuries. Dr. Baliga had "coined new definitions not in vindication of his vast surgical acumen, but only to suit the exigencies of the occasion".

In support of his conclusion that under identical conditions an injury would produce varying effects, he relied on four text-books and gave their names, but subsequently he admitted that there were no passages in those books to support his conclusion, Mr. Chandrachud said. This indicated that Dr. Baliga was not careful in giving the evidence.

Dr. Baliga had stated in evidence that one bullet could cause the injuries on two left-hand fingers and the head of Ahuja. Mr. Chandrachud said that this was physically impossible because the direction indicated by the gutter fracture on the head and by the injuries on the two fingers were opposite to one another. There were three injuries on the fingers, admittedly in a line. It would be an extremely queer coincidence if one of them and the chest injury were caused by a bullet and the other two on the fingers and the head injury by another bullet as suggested by Dr. Baliga. This, however, left the third bullet unaccounted for.

Even in conjunction with Dr. Baliga's evidence the Government Pleader said the evidence of Dr. Jhala, the Police Surgeon, should be accepted by the court on many points. They were, (1) the injuries on the chest

and the head were individually sufficient in the ordinary course of nature to cause death ; (2) the injuries on the head and the chest were caused by bullets fired from a distance of over 18 inches ; (3) the injury on the head was caused from the back with the back of the victim towards the assailant and that destroyed the defence theory that during the struggle, both were face to face throughout ; (4) the injury on the head was the last injury and this was corroborated by the evidence of Anjani, a servant of Ahuja, who had stated that the third noise was accompanied by the breaking of a glass-pane ; and (5) the injury on the head was not caused by a rebounded bullet.

The Government Pleader contended that the accused himself had gone to the witness-box but had failed to "*give any assistance*" in proving the defence theory of struggle and accident.

The romance of defence has its limitations and the theory of a struggle could not be "stretched to absurdity." Mr. Chandrachud argued.

The Government Pleader, Mr. Y. V. Chandrachud, contended before Mr. Justice Shelat and Mr. Justice Naik at the Bombay High Court that the evidence of Mrs. Sylvia Nanavati, the wife of the accused in the Ahuja murder case, did not inspire any confidence and should not be approached with any sympathetic consideration. There was no guarantee that she would not tell falsehood to the court, he added.

Mrs. Nanavati was "a self-confessed sinner and her testimony can hardly inspire any confidence. Further, on her own evidence, she fooled her loving husband and had told him falsehood for 18 months and there is no guarantee that she will not tell falsehood to the court. This woman, who has brought misery to her home and disgrace to womanhood, should not be believed. Her evidence should not be approached with any sympathetic consideration, as she was the architect of her own misfortune", he said.

Mr. Chandrachud, who made these comments after examining her evidence at length, said that her evidence that she had seen a gun with Ahuja at Delhi and that she had, therefore, told her husband that if he (the accused) went Ahuja's flat, Ahuja might shoot, appeared to be false. First of all, Ahuja had no arms licence, secondly, she would

not prevent her husband from going to Ahuja, because if Ahuja shot the accused, it would only help her plan to marry Ahuja, he argued.

Mr. Chandrachud said that the evidence showed a tendency that it was not at all possible that she disclosed for the first time her intimacy with Ahuja to her husband on April 27, 1959. There might have been discussion on the point that day, he said. Her evidence was that she had not made up her mind to marry him; so also Ahuja had not. She also knew that she could not marry Ahuja unless she obtained a divorce. Was it, therefore, probable that she would disclose her unfaithfulness to her husband that day all of a sudden, Mr. Chandrachud asked.

Nanavati, being on leave was staying with her from April 18 and it was strange that he had not noticed his wife being "*cold towards him*" till April 27, 1959. It was difficult to say that his suspicion had not arisen earlier.

Even it was disclosed only that day all of a sudden, the Government pleader continued, it did not amount to grave and sudden provocation to commit the offence, as the incident occurred several hours after the disclosure had been made and he had enough time to reflect and cool down. Mr. Chandrachud had not concluded his argument on the evidence of Mrs. Nanavati when the court rose for the day.

Earlier, the Government Pleader analysed the medical evidence and asserted that the evidence on record did not corroborate the defence theory of a struggle between the accused and Ahuja. On the contrary, the facts that the accused had no injury on his body and there were no blood stains on his clothes proved that he had not entered the bath-room at all, but had fired the shots from outside the bath-room. Mr. Chandrachud explained the injury on the back of Ahuja by saying that it was more probable that it had been caused while Ahuja slumped down. Ahuja's back might have dashed against the edge of the wall of bath-room, he added.

Discussing the evidence of the investigating police officers, the Government Pleader said that the evidence of Deputy Inspector Gautam of the Gamdevi Police Station, who made the panchnama of the scene of the alleged offence, showed that all the furniture in the bedroom was in the normal condition. There was no suggestion

made to that witness that there was any indication of a struggle in the room.

The evidence of that officer also showed that the floor of the bath-room was blood-stained and blood was dripping from the wall. It was strange that there was no blood stain on the clothes of the accused if his story that he was grappling with Ahuja in the bath-room was true. A pair of spectacles, belonging to Ahuja, had been found lying unbroken, which also did not support the theory of struggle.

The Government Pleader then dealt with the evidence of different defence witnesses. Mr. Chandrachud said that he did not characterise the evidence of Admiral Katari, Chief of the Naval staff, as untrue and it might be, as his evidence showed, that the accused was honest, sober and efficient. It might be that circumstances forced the accused to commit the offence. He behaved like a man of honour till he received advice from his friends or those interested in him very much.

The Government Pleader said that Commodore Nanda was "more anxious" to help a brother officer in difficulties and made 'slightly exaggerated' statements in his evidence. Commodore Nanda's evidence was that the accused was a good shot at moving targets, where the moving targets were inanimate articles and then movement could be anticipated by a careful study. Even assuming that was correct, that would not show that the accused would be a good shot where the moving target was a human being whose movements, could not be predicted, he added.

Commodore Nanda said that there were shooting practices on board the ship, INS, Mysore, and the ammunition issued for those practices would be shown in a particular register, but the entries in that register did not support his evidence. It was clear that he was prone to exaggeration, the Government Pleader added.

He contended that on the contrary, the evidence, which showed several improbabilities, indicated that the accused had the intention to kill Ahuja.

Resuming his arguments on the evidence of Mrs. Sylvia Nanavati, the Government Pleader said that the theory of conversation between the accused and his wife before lunch on April 27, 1959 was concocted in order to provide Nanavati with an excuse for carrying a revolver to the flat of Ahuja. It was her misbehaviour that landed her husband

in the docks and the least she could do was to provide him with an excuse to take the revolver to Ahuja's flat.

It was highly improbable, Mr. Chandrachud contended, that the accused came to know of his wife's intimacy with Ahuja for the first time on April 27, 1959. If that was so, he would have lost his temper against her. The evidence on the record did not indicate any such tendency at all, he added.

Dealing with the statement of the accused, the Government Pleader said that the most of the questions on the details of the struggle, claimed to have taken place between him and Ahuja, the reply of the accused was either "I do not know" or "I am not aware." The accused had stated that in the heat of the moment he did not remember to have seen any blood. "Are your Lordships going to accept this statement as true," he asked.

The Government Pleader said that the answers given by him to questions did not indicate that the shots went off accidentally. He had stated that the shots went off during a struggle. That did not indicate that they were fired accidentally, he added. The statement of the accused was not inconsistent with his deliberate shooting during the course of a struggle.

Mr. Chandrachud referred to the evidence of Nanavati and said there were several "*tissues of lies*" and improbabilities on it. If a wife did not behave well, a husband would not straightway suspect his wife's infidelity. It was rather strange that when the accused came to know of his wife being unfaithful to him, he would think of "consigning" her and the innocent children to the person with whom she had developed intimacy. Normally, many quarrels were over the possession of children, he said. The accused could have entrusted the children to his parents, he added.

The excuse given by the accused for going to the ship on that day was for getting medicine for his sick dog, but his own subsequent statement belied that. On going to the ship, he did not take medicine, but immediately asked for a revolver and ammunition, the Government Pleader said. He went there only for taking a revolver. He wanted to commit suicide, but that again was false. He wanted to kill Ahuja, Mr. Chandrachud maintained.

The evidence of the accused was that he took the revolver for self-protection. By that, in fact, he confessed that he wanted to kill Ahuja. That meant that if Ahuja

had taken out his revolver, the accused would have shot Ahuja before the latter could use his weapon. That the accused had the intention of using the revolver, he added. Every act of the accused was consistent only with deliberate shooting.

Having been warned by his wife that Ahuja might shoot him, the accused would not close the door behind him on entering the bedroom of Ahuja, Mr. Chandrachud said. But he closed the door behind him and that belied the warning given by his wife. He went there to "shoot Ahuja at sight" and closed the door to prevent Ahuja from escaping and from getting any help, the Government Pleader said. The evidence of the accused showed that Ahuja slumped down after the first shot. If that was so, the other two shots were not in an accident, in any case, he contended.

The loading of the revolver immediately on getting it, then going in pursuit of Ahuja and unloading the revolver immediately after the incident, showed the intention of the accused to kill Ahuja. He had not given any explanation for immediate loading and unloading of the revolver. Nor had he given any details of the position of the two persons during the struggle.

Mr. Chandrachud said that the accused, instead of persuading his wife to return to the path of virtue, went to Ahuja, to know his intentions about marrying her and taking care of the children according to the defence. This was highly improbable. Mrs. Nanavati betrayed her husband's trust, gave no thought to her husband's trust, gave no thought to the welfare of the children and spurned a sporting offer from the husband to forgive her if she gave up Ahuja. If it was a sudden disclosure of infidelity, it was highly improbable that such a wife would be escorted by any man to a cinema show, the Government Pleader argued.

The Government Pleader submitted that he has proved that the accused killed Ahuja by deliberately shooting him. The plea that it was an accident shooting could not be sustained, as Section 80 I. P. C. under which alone it could be taken, had no application. Because, the accused was at no time engaged in a lawful act, nor did he adopt lawful means. The plea of accident was not based on sound foundation at all and deserved to be dismissed, he added.

He maintained that the jury verdict was perverse and the jurors had surrendered their reason to "Popular clamour". He narrated several improbable circumstances in the case like the husband thinking of wife's adultery merely on her un-responsiveness to a touch, the husband on hearing of a confession of adultery of his wife going to negotiate the marriage of his wife with the person with whom she was intimate, the towel remaining on the body of Ahuja despite the alleged struggle and the shots being fired thrice accidentally. Against these negative facts, there were the positive evidence of extra-judicial confession, statement to Provost Marshal, strong evidence of motive, the medical evidence, the evidences of the inmates of the flat and total absence of struggle. He contended the jury verdict was the very negation of reason and the accused was guilty of the offence with which he was charged.

The Government Pleader urged the court to express its disapproval of the abusive language, the defence counsel had used against Dr. Jhala at the trial court. Mr. Chari said that in the correspondence between Mr. Khanda-lawala, the defence counsel at the trial court, and Dr. Jhala, the former had assured Dr. Jhala that those words were not directed against him.

The Government Pleader also requested the court to express its disapproval of the allegation of tutoring witnesses, made by the defence at the trial court against another lawyer as it was contrary to the etiquette of the bar. Mr. Chari pointed out that similar allegations had also been made by the Public Prosecutor, though indirectly.

Mr. Chari said that among the various letters seized by the police from the residence of Prem Ahuja, were, four written to him by another married woman in May, 1958, about the same time when Mrs. Nanavati wrote her first letter (May 24, 1959) to Ahuja. Questions on these letters were ruled out and the letters were shut out from the record by the trial Judge.

Mr. Chari maintained that these letters were relevant to the present case to decide the questions (1) whether Mrs. Nanavati "set her cap" on Ahuja or he "laid siege to her heart", (2) whether Ahuja was trying to back out of a promised marriage; and (3) if he was living "dangerously" whether he would not have prepared himself mentally

and materially to meet a situation implicit in such relations—whether he would have kept a revolver to meet the situation that might arise out of his illicit relations with women. He submitted that the trial Judge was in grave error when he refused to allow these letters to go in evidence.

On Their Lordships asking what the Government Pleader had to say, Mr. Y. V. Chandrachud said that these letters could not be admitted at this stage. The Court, however, had power to admit additional evidence and if it was thought that they would be of any assistance, he would not press his objection.

Mr. Justice Shelat said that the letters had to be proved. Mr. Chari said that Mrs. Nanavati could be recalled for that. Mr. Justice Shelat then remarked that she would have to be cross-examined on that point by the Government Pleader. Mr. Chari said that he would let the Court know on the next day what he proposed to do in the matter.

Mr. Chari, opening his arguments, said that this was one of the "border line cases" where every circumstance was capable of two explanations and every allegation against the accused capable of a reply. But for that, it would be strange that there should be such a clear divergence between the jury and the trial judge in their conclusion, he added.

In a reference, the High Court was not connected with what the prosecution was as presented in this Court but with the case as presented before the trial Court. Mr. Chari said: He drew the attention of the Court that the prosecution had first cited Mrs. Nanavati as one of its witnesses, but later did not examine her on the ground that she was a witness on whom the prosecution did not place any reliance and that she was not an essential witness.

He quoted from the records points from the arguments of the prosecution and the summing-up of the trial Judge to show that the prosecution itself wished to rely on the evidence of Mrs. Nanavati to prove the motive and the reason for the alleged shooting by the accused of Ahuja but subsequently gave up the idea of calling her as a prosecution witness, as she might harm its case.

The prosecution has based its case on the conversation that took place between the accused and his wife at 1 p. m.

on April 27, 1959, when she made a confession of her intimacy with Ahuja. The Prosecution had also asked the jury to consider whether it amounted to sudden and grave provocation. But, the Government Pleader here wanted the Court to hold that no such conversation had taken place. Mr. Chari contended that this Court was not competent to consider a new case, but only that which was before the trial court, what was sought by the Government Pleader was to convert this into an original Court of trial minus witnesses. That could not be done.

Mr. Chari said that Mrs. Nanavati's letter of May 24, 1958 supported her evidence on certain points. Her evidence was that the letter was written five months after she had developed intimacy with Ahuja. The letter showed that the question of marriage had been discussed between them and also he was talking of marrying other girls. This supported her evidence that he talked of marriage before intimacy and later he avoided any talk about the marriage.

Ahuja had asked Mrs. Nanavati not to meet him or telephone him, but her letter of April 17, 1959 showed that she was impatient, Mr. Chari said. Nanavati was "one big obstacle" in her way and had become "an object of her hatred". That was why she was unresponsive to her husband's touch on April 27, 1959, he said. Mr. Chari maintained that the conversation between the husband and wife on the date was within the bounds of probability, and not imaginary.

Nanavati did not show his temper against his wife when she made a confession of her intimacy with Ahuja because, Nanavati felt that he should not stand in her way if she loved another man.

Mr. A.S.R. Chari, counsel for Commander K. M. Nanavati, the accused in the Ahuja murder case, contended before the Bombay High Court that every circumstance in the case was capable of two explanations and if the jury had accepted one view, its conclusion could not be described as perverse.

Analysing the evidence before Mr. Justice Shelat and Mr. Justice Naik, he submitted that the circumstances in the case were consistent with the defence plea that Nanavati did not have the intention to kill Prem Ahuja on April 27, 1959. The accused went to Ahuja's flat only to seek an explanation for his behaviour or to find out what his in-

tention were in regard to Mrs. Nanavati. Counsel also asserted that the extra-judicial confession that Nanavati was alleged to have made to a watchman of Ahuja's building was not at all in the realm of probability.

Mr. Chari said that Mrs. Nanavati would not appear in the court to identify certain letters written by an woman to Ahuja in May, 1958, (as he had indicated) on the next day but would file an affidavit, identifying the signature of that woman. Mr. Chari said that the Government Pleader had agreed to the procedure. Replying to a inquiry from the court, the Government pleader, Mr. Y. V. Chandrachud said that under the amended Section 510 A, Cr. P. C., such a procedure could be adopted.

Continuing his arguments, Mr. Chari referred to the conversation between Nanavati and his wife on April 27, 1959, on the question whether Ahuja was prepared to marry her and look after the children. Ordinarily, in matrimonial matters, the tussle between a husband and a wife would be over the children, but an analogy of that kind could not be applied here. If his intention was to commit suicide, naturally his anxiety would be about the children. If Ahuja was prepared to marry her and look after the children Nanavati would have preferred death to dishonour.

Mr. Chari said that there was no intention on the part of Nanavati to kill Ahuja as that would not help him to win back the love of his wife. The killing of Ahuja would only bring publicity to Nanavati's dishonour. On the other hand Nanavati's readiness to forgive his wife for her past adultery provided she gave an assurance not to see Ahuja indicated that he had no anger. Nanavati had applied reason and judgement in his action, Mr. Chari added.

Nanavati's intention to commit suicide was, under the circumstances, more probable than the intention to kill Ahuja, counsel said. An honourable suicide was preferable in Nanavati's view. This probability was supported by several circumstances in the case. If he had the intention to kill Ahuja, he would not have drawn the revolver from his ship and thereby involve his brother-officers in the affair. No conspiracy with other officers to kill Ahuja had been alleged. Drawing the revolver from the ship was more consistent with his intention to commit suicide.

The Government Pleader had argued that the immediate loading of the revolver was a strong proof of Nanavati's intention to kill Ahuja. Mr. Chari said that it was a

"neutral circumstance" consistent with either intention. Putting the revolver in a cover with his name on it militated against the theory of his intention to kill. An envelope in a crumpled shape would arouse curiosity. In any case, he would not have used a cover with his name on it. The probability was that he would have then concealed it in his trouser pocket. That would be more convenient for ready use. The fact that he put the weapon in a cover with his name on it was more consistent with his intention to commit suicide.

If a jury of reasonable men took that probability into consideration, that view could not be called perverse, Mr. Chari said. He pointed out that the prosecution itself had stated in its opening address before the trial court that Nanavati had expressed his intention to commit suicide.

Mr. Chari said that if he had the intention to kill Ahuja, he would have carried the revolver with him when he went to the office of Ahuja. The Manager of Ahuja's office had said nothing on this point and no suggestion had been made by the prosecution to that witness. The evidence of the accused was that he had not taken the revolver with him when he went there. It was also probable that, though his wife had warned him, he did not take the weapon as he did not expect Ahuja have a revolver in his office.

The evidence of the accused, supported by the surrounding circumstances and the corroboration afforded by the evidence of Mrs. Nanavati, showed that he did not go to the flat of Ahuja as "*a hunter of his victim*". It was more probable that he went there with the intention to have a talk with Ahuja in regard to his wife and children. Mrs. Nanavati, who was infatuated with Ahuja would not speak a falsehood to help her husband who had killed her lover, Mr. Chari said. She had spoken the truth, he added.

The three witnesses of "Jeevan Jyot"—Miss Ahuja (Prem Ahuja's sister) and their two servants—contradicted themselves on many important points and it would, therefore, not be safe for the Court to rely on their evidence based on memory as to what had happened in the flat that day. They contradicted one another on who first entered Ahuja's bedroom, on the alleged question Miss Ahuja had asked the accused, on the threat alleged to have been given by the accused to Anjani, on the point whether the accused pushed Anjani or Miss Ahuja while coming out, on what they had heard at the time of the incident and as to whether

Ahuja died before or after he was carried to the cot. Anjani's memory was faulty and he had resorted to imagination and inference, Mr. Chari added.

Mr. Chari discussed at length the probability of the extra-judicial confession said to have been made by the accused to Puran Singh, the watchman of "Jeevan Jyot", on which the prosecution, he said, had placed great reliance.

Mr. Chari submitted that Nanavati's "clear" evidence in this regard that it was absurd that he would discuss intimate family affairs with a watchman, who was a total stranger to him, appeared to be not only reasonable, but absolutely credible. And that evidence was truthful, Mr. Chari added.

He contended that it was utterly unsafe to rely on Puran Singh's evidence on the so-called confession of the accused. Apart from that, Mr. Chari said, it was first necessary to prove that there was an extra-judicial confession, voluntary or otherwise, before proceeding to consider it.

Was it not rather exerting one's imagination, as Puran Singh seemed to have done, to think that Nanavati would own up his guilt, if he had committed it, to a watchman rather than to Miss Ahuja, whom the accused knew and whose brother had an affair with Mrs. Nanavati. "The whole thing is absurd," Mr. Chari remarked.

If the watchman had been alone, the Court would have asked for corroboration of the extra-judicial confession Mr. Chari said. But the position was that Anjani, a servant of Ahuja, while admitting that he was in a position to hear the conversation between Nanavati and the watchman, had deposed that he could not hear that part of the talk relating to the confession.

Another witness, Deepak, had said in his evidence that when Puran Singh asked Nanavati why he (Nanavati) had killed "*our sab*" (Ahuja), he heard the accused only say "*get out of my way*". That was a direct contradiction of Puran Singh's statement.

Discussing the evidence at length, counsel said that the nature of the injuries, the position of various articles found in the bath-room and several other circumstances were more consistent with the defence theory of a struggle.

At the resumed hearing, Mr. Chari submitted an affidavit by Mrs. Sylvia Nanavati identifying certain letters written by another woman to Ahuja in May 1958.

Continuing his arguments, Mr. Chari said that if Nanavati had desired to confess, he would have done so to a brother officer (the Provost Marshal) rather than to a stranger—a watchman of Ahuja's building. Mr. Chari said that before the extra-judicial confession allegedly made to the watchman was accepted, it must be established that it had in fact been made. The evidence of the watchman on the point was not corroborated by either of the servants of Ahuja who had heard a part of the conversation between the accused and the watchman.

The watchman did not mention this confession to the police when he first went to the police station, but spoke of it only after he had gone to the flat. That lent support to the inference that he might have asked the servants why Ahuja was killed, Mr. Chari said. If the jury felt it unsafe to rely on the bare word of the watchman, its view could not be said to be perverse. The trial Judge himself had kept it out of consideration in making a reference of the case to the High Court, counsel said.

Dealing with the evidence of Commander Samuel, the Provost Marshal, Mr. Chari said that Samuel invited Nanavati three times to come inside his flat and explain clearly what had happened. But Nanavati refused and said that he must go to the police. The anxiety of the accused to set the law in motion was not because of a consciousness of his guilt, but because he knew that he was responsible in some way for some serious happening, counsel said.

The accused had told Commander Samuel: "*I do not quite know what has happened, I think I shot a man*". What the Provost Marshal had understood by that was that Nanavati was involved in a shooting affair. That was what he had conveyed to the Deputy Commissioner of Police, Mr. Lobo. It was necessary that the word "accident" should have been used. The prosecution had not suggested to Commander Samuel that he was not speaking the truth and, therefore, his words should be accepted in preference to what Mr. Lobo had said on that point.

Nanavati's evidence on this point agreed with that of Commander Samuel, Mr. Chari said. A confession of deliberate killing could not be inferred from Nanavati's statement to Commander Samuel. The evidence of the Provost Marshal clearly indicated "the bare outline of the defence case". This was before Nanavati had contacted his counsel or friends or relatives, Mr. Chari pointed out.

Mr. Chari then dealt with the evidence on what had happened inside the bedroom of Ahuja on the day of shooting. He said that all the injuries on the body of Ahuja were oblique and except the one on the chest, others were grazing injuries. The chest injury could be caused only with revolver muzzle being held at an oblique angle from the right of a distance of over 18 inches, according to the prosecution evidence. The Police Surgeon probably thought that the bullet causing the web injury on the left hand of Ahuja had gone out and caused another injury. That was why he had dealt with head injury after the web injury and not those on two other fingers of the same hand, he added.

The head injury also showed, counsel said, that it had been caused obliquely and if the prosecution case that it was inflicted from behind was to be accepted, the muzzle must have been held lower than the head. The injuries on the other two fingers of Ahuja's left hand had not affected the bone at all. The prosecution case was that the accused shot Ahuja from a distance of not more than six feet.

Mr. Chari contended that the nature of the injuries was a "*crying contradiction*" of the prosecution theory. The prosecution had told the jury that the victim might have tried to escape into the bath-room and sat facing the accused when he received the chest injury. He must have stood up when he received the head injury.

Mr. Chari said that the prosecution story was "*incredible*". Why should the jury believe that Ahuja assumed all those postures? The prosecution was unable to put before the jury a satisfactory explanation of the odd nature of the injuries to support its case and, therefore, the jury might have rejected its case, he said. The tattooing on the left hand injuries also militated against the prosecution case.

The evidence of the ballistic expert was that tattooing could be seen only upto eight inches and he had tested the revolver in question. Mr. Chari said his evidence was acceptable in preference to text-books which made statements of a general character.

Mr. Chari said that the presence of bullets, a chappal of the deceased and his spectacles—all scattered in the bath-room—clearly indicated that the struggle between the accused and Ahuja took place there. The vertical injury on Ahuja's back was positive proof that when Nanavati

banged him against the bath-room door, Ahuja received injury.

Counsel said that the evidence of the police surgeon, a prosecution witness, on the point was in direct contrast with that of the ballistic expert, also a prosecution witness, and another doctor, a defence witness. It would not, therefore, be safe to place much reliance on that evidence, he added.

He maintained that Nanavati, who had spoken of many incriminating circumstances against him though he need not have, had told the court all the details he remembered of the half-a-minute struggle he had with Ahuja. The fact he did not remember some details, however, did not show that he was not speaking the truth, he said.

Mr. Chari maintained that the prosecution suggestion that the accused could have dropped the revolver to avoid the accident could not be sustained. If that was done, Ahuja would have got possession of the weapon and thus be in a dominant position in the struggle.

The primary intention of the accused in drawing the revolver from the ship was to keep himself ready to commit suicide if no honourable way out of the situation was found, Mr. Chari said. He had not, however, fixed any time for that and it depended on whether Ahuja agreed to marry Mrs. Nanavati and look after the children. In the event of Ahuja agreeing, Nanavati would have carried out his design to commit suicide, he added.

The idea of carrying the revolver occurred to Nanavati only when, on ascending a few steps of Ahuja's building, he suddenly remembered the warning given by his wife. He went back to the car and took the weapon, counsel said. The idea of self-protection was incidental and arose at a later stage. If the idea, to commit suicide did not persist, Mr. Chari said, it was only because of what transpired after he went inside the flat. Mr. Chari complained that many relevant questions had been disallowed by the trial court and that was likely to cause prejudice against the accused.

The prosecution had stated that unloading of the revolver by the accused immediately after the incident was a clear proof of his intention to kill Ahuja. Mr. Chari said that if he was conscious of his guilty, he would normally have continued to keep the revolver loaded for the purpose of effecting his escape from the building. He

knew that the inmates of the flat were aware that Ahuja was dead. Mr. Chari said that it was reasonably possible to take the view that he unloaded the revolver as he had realised the mistake of carrying a loaded revolver and his first reaction was that such a terrible thing should not happen again. This circumstance militated against the contention that had the intention to kill, counsel added.

He was in a dazed state of mind then. That did not mean that he was unable to go about doing certain activities. His senses were benumbed and the only idea in his mind was to report to the police. His subsequent conduct was consistent not with that of a killer, but with that of a man who did not want to kill, but still knew that something terrible had happened.

Mr. Chari said that Nanavati had told the court whatever he remembered of the struggle, including some incriminating circumstances which he need not have. He had stated that Ahuja made an attempt to grab the packet, but he managed to take the weapon in his hand ; Ahuja gripped his wrist and tried to twist it in an attempt to take the revolver ; Nanavati jerked his hand in various directions to shake off the grip ; banged Ahuja towards the door ; Ahuja tried to kick Nanavati in the groin, but the accused pushed Ahuja into the bath-room and both of them were "*shuffling*" in the tiny bath-room. The accused was facing towards the lavatory and Ahuja towards him. After the first shot went off, Ahuja had let go his grip on his wrist. The second one heard by the accused was after seconds and Ahuja slumped. He also admitted that his finger was on the trigger throughout, though he had no control over it.

Mr. Chari said that the accused had given so many details of a struggle which lasted about half a minute. How much more details could a court expect from a person engaged in a life and death struggle ? Counsel pointed out an authority from a book to show that single-action-cum-double-action revolver could easily go off accidentally in a struggle. A struggle for a revolver was always the quickets, he added.

Cross-examination of Nanavati's evidence did not show that he was speaking falsehood. He had admitted even incriminating facts, though he need not have done so. If the jury accepted his evidence, it could not be called perverse.

Mr. Chari said that one of the two damaged bullets in the case must have caused the gutter fracture on the head of Ahuja. The ballistic expert's evidence was that a rebounding bullet could cause a shallow injury and splinter bones if it had sufficient force. Dr. Jhala, the Police Surgeon, also admitted that the gutter fracture could be caused by a rebounding bullet if it had sufficient force. Mr. Chari said that the bullets produced in the court told the real story. Dr. Baliga's evidence was that a torn bullet could have caused the head injury. Counsel contended that the evidence, therefore, indicated that the head injury might have been caused by the torn bullet after it had hit against a hard substance. According to him, the glass-panes broke on account of the blast in the room.

Dealing with the evidence on how the injuries were caused, Mr. Chari pointed out the conflicting views of the Police Surgeon on the one hand, and the ballistic expert and the defence witness, Dr. A. V. Baliga, on the other, and asked the court not to rely on it. The ballistic expert's view was that the gutter injury could have been caused by a rebounding bullet, while the Police Surgeon had held the contrary view. The ballistic expert was supported by Dr. Baliga.

Mr. Chari said that two bullets, found in the bath-room were both flattened and damaged, one of them having a little projection. The absence of rebounding marks in the room could not mean that the story of rebound was impossible, Mr. Chari said.

He stated that the injuries on the three left-hand fingers could not have been caused by the same bullet. That was a ballistic impossibility, he added. The Police Surgeon had advanced the theory that they were caused by the same bullet because of its theoretical necessity. The Surgeon's inference that the three injuries were in a straight line was deduced from memory and not from records, Mr. Chari said. He had ruled out that they could have been caused by two bullets, but it could have been so, Mr. Chari said. One of them, Mr. Chari said, might have rebounded and hit Ahuja.

This was rendered probable by the web between the ring and little fingers acting as a cushion. This also would explain the absence of any rebounding marks in the room. The Police surgeon, in his post-mortem, had failed to

record whether there was tattooing on the finger web. This was a very significant omission, Mr. Chari said.

Mr. A. S. R. Chari, Counsel for Commander K. M. Nanavati, the accused in the case, earlier concluded his arguments. Their Lordships, however, did not call upon the Government Pleader, Mr. Y. V. Chandrachud, to argue in reply. Mr. Justice Shelat then began delivering the judgement.

Concluding his arguments, Mr. Chari said that this was a "*border-line*" case where there was an explanation for every circumstance in favour of the accused. He said that eight of nine jurors in the Sessions Court had found the accused not guilty while one was against him. The nature of the verdict showed that even if there was any misdirection in the summing-up of the trial judge. It had not affected the jury decision. Mr. Chari, therefore, contended that there was "no strong ground at all" to interfere with the verdict of the jury in this case.

Assuming that the High Court was inclined to take the view that the jury verdict was unreasonable, Mr. Chari asked whether the High Court was to a certain extent, limited by the view expressed by the trial judge. He submitted that in deciding what offence the accused was guilty of the High Court should give due weight to the opinion of the trial judge who had the advantage of watching the witnesses giving evidence and their demeanour. The trial judge had expressed the view that Nanavati was guilty of the offence under Section 304 (culpable homicide not amounting to murder) and that it should be accepted, Mr. Chari added.

Even according to the prosecution at the trial court and the Government Pleader here, the accused came to know of his wife's intimacy with Ahuja about 1 p. m. and killed Ahuja at 4 p. m. that day. According to them, the accused had been motivated by a single purpose. Mr. Chari said that this was a clear indication that the accused was acting under a very strong emotion which was unleashed by his conversation with his wife. The passion overpowered his reason and judgement and anger deprived him of self-control.

The prosecution case itself before the trial court was placed on the basis that he acted under sudden and grave provocation, Mr. Chari said. He stated that the trial judge had pointed out to this fact in his summing-up.

He said that it was not necessary that the provocation must come from the man killed. The real test was not the number of hours that had elapsed after the provocation, but the fact whether he was acting under the stress of passion. This had been admitted by the prosecution.

Therefore, even if your Lordships are inclined to come to the conclusion that you are compelled to interfere with the verdict of the jury, Mr. Chari said, "you may accept the unanimous conclusion of the trial judge as well as the jury that the accused is not guilty of murder under Section 302 I. P. C."

Earlier, Mr. Chari had told the court, the medical evidence showed that the possibility of some of the injuries on the fingers of Ahuja's hand being associated with either the chest injury or the head injury could not be ruled out. The medical evidence did not indicate that the chest injury or the head injury would lead to spurting of the blood immediately.

Mr. Chari explained the various circumstances in the case and said that considered separately or as a whole, they were consistent with the defence contention as some reasonable men might hold and with prosecution theory as some others might think. The verdict could not, therefore, be said to be perverse. He said that the court should remember that the revolver was not tested for finger prints and if that was done, it would have provided a strong piece of evidence in either confirming or negative the theory of struggle. If the struggle theory was true, it might have shown the finger prints of Ahuja also.

Mr. Chari then referred to the letters written by a married woman to Ahuja and which were brought in evidence at the hearing before the High Court, and said that these letters supported the evidence of Mrs. Nanavati that Ahuja was trying to back out from the promise of marriage, but she still believed that she would be able to win over him.

HIGH COURT JUDGEMENT

Commander K. M. Nanavati was adjudged guilty of murder by Mr. Justice J. M. Shelat at the Bombay High Court.

Mr. Justice Shelat, one of the two Judges constituting the Bench hearing the Ahuja murder case, proposed the sentence of rigorous imprisonment for life for Nanavati.

Mr. Justice Naik, the other Judge on the Bench, delivered his judgement on next day after which the order of the High Court was made final.

As the trial Judge, Mr. R. B. Mehta, disagreed with the verdict, he made a reference of the case to the High Court. He had expressed the view that, Nanavati was guilty of the lesser offence.

The case against Nanavati was that when he came to know his wife's intimacy with Prem Bhagwandas Ahuja, a city businessman, he secured a revolver from his ship and killed Ahuja at his residence by firing three shots on April 27, 1959. The defence plea was that Ahuja was killed accidentally in a struggle for the revolver.

In delivering his judgement, spread over three days, Mr. Justice Shelat came to the conclusion that the verdict of the jury was perverse.

Mr. Justice Shelat observed : "There is no doubt from the record of the case that Ahuja blighted the career and happiness of the accused. As a man of courage and honour, he (the accused) was bound to feel with extreme soreness the deepest of injuries that Ahuja had brought on him and his domestic life. There is nothing surprising or abhorrent in the step the accused took in avenging his injuries, as, perhaps, many persons of his type would have reacted in a similar manner in the circumstances."

"But, the law of this country does not permit the avenging of a wrong by taking law into one's own hands and we have to administer that law objectively, no matter how others might think."

"The accused is convicted under Section 302 I. P. C. (Murder) and is sentenced to rigorous imprisonment for life", Mr. Justice Shelat concluded.

Immediately after Mr. Justice Shelat's Judgement, Mr. Justice Naik said that he would pronounce his judgement on the next day.

A hushed atmosphere of expectancy hung over the packed court-room as Mr. Justice Shelat came to the concluding portion of his judgement. The moment it was made, several visitors in the court-room rushed out to flash the news to the eager crowds which thronged the precincts of the High Court and overflowed into the roads in the Flora-Fountain area.

Mr. Justice Shelat dismissed the contention that the facts and circumstances of the case disclosed that the accused committed the offence under a grave and sudden provocation and said: "In the circumstances of the case, no question of grave and sudden provocation can possibly arise".

The facts and circumstances established by the prosecution were, Mr. Justice Shelat said, consistent only with the intentional shooting by the accused and were thoroughly incompatible with the defence theory of a struggle or involuntary shooting.

The Judge stated that the accused went to the bedroom of Ahuja, armed with a loaded revolver to take him by surprise and shoot him down. In my view, the extra-judicial confession deposed to by watchman of Jeevan Jyot, (Nepean Sea Road, where Ahuja resided) was both true and voluntary, and it has been corroborated by the various circumstances established by the prosecution.

"Even if the evidence of the watchman regarding the extra-judicial confession was to be eliminated, there was still over-whelming evidence in this case establishing the fact that the accused shot Ahuja with the intention to kill and negating the possibility of a struggle".

The facts established by the prosecution, according to His Lordship, were: the deliberateness with which the accused obtained the revolver and ammunition from his ship; his loading it immediately on obtaining them in his cabin; his rational state of mind as shown by his talking to his brother-officers in a normal manner; his going to Ahuja's office and not finding him there, pursuing him to his residence, his abrupt and unushered entry into the bedroom of Ahuja and closing the door immediately behind him; the short time that elapsed between his entry and exit; the physical impossibility of a struggle and the three

shots being ejected involuntarily while the revolver was in his hand with his finger on the trigger all the time ; the ominous silence of the accused to a question by Ahuja's sister ; the unloading of the revolver while going down the staircase ; his equally ominous silence about an accident or a struggle to Commander Samuel whom the accused had contacted ; and his utter to surrender and report to the police.

As against these circumstances proving the prosecution case, His Lordship was of the view that the following circumstances ruled out the defence theory of the struggle : the fact of the towel remaining in fact on Ahuja's body ; Ahuja's spectacles lying unbroken in the bath-room, the absence of any marks of struggle and signs of injury on the person of the accused or blood stains on his clothes ; Ahuja using only one hand during the struggle as deposed to by the accused, and the impossibility of a struggle during which Ahuja spoke no words and raised no alarm, even after the injury, two more bullets going off accidentally, and Ahuja keeping on hanging to the accused.

At the outset, His Lordship, dismissed a preliminary point raised by the Counsel for the accused and held that if the High Court found the jury verdict was vitiated by a mis-directions of the trial judge, it had the power to disregard the verdict and exercise any of its powers as a court of appeal. The trial judge view that the accused was guilty of the lesser offence under section 304 (1), I. P. C. was not binding on the High Court and the entire case was before it.

Mr. Justice Shelat said that certain misdirections of the trial judge had vitiated the jury verdict. Th mis-directions pointed out by His Lordship included the failure of the trial judge to explain to the jury the burden that lay on the accused under Section 105 of the Indian Evidence Act to prove the defence theory and the fact that confession by a wife to her husband did not, in law, amount to grave and sudden provocation ; abdiction of the functions by the trial judge is not telling the jury of the inapplicability of section 80, I.P.C. , under which the defence claim exception ; there or in directing the jury that the prosecution case was entirely dependant on circumstantial evidence and the failure is not bringing to the notice of the jury the three letters of Mrs. Nanavati to Ahuja.

Analysing the evidence of the watchman, His Lordship ruled out the defence suggestion that the watch men had conspired with the two servants of Ahuja or that he had been tutored by Miss Ahuja, sister of the victim. Commenting on the evidence of Provost Marshal, Samuel, the Judge said that the witness was embellishing the evidence when he said during cross-examination that the accused had mentioned about a "fight".

From the evidence of the ship Officers, it was clear that the issue of the revolver to the accused while on leave was improper and the Capt. and the Gunnery officer tried to put the blame on each other. The court was, however, not concerned with that question, it was for the relevant authorities to look into.

Mr. Justice Shelat, discussed the challenged met by the defence to the integrity of the evidence of Miss Ahuja and said it could not be sustained. Her evidence had been consistent all through out and gave a clue to the time between the ringing of the call bell at Ahuja's flat and the hearing of the noise—which shattered the defence theory of any possibility of a struggle. Her evidence on this point was corroborated by that of Anjani, her servant. If the "Jeevan Jyot" witnesses were to give false evidence, they could as well have turned themselves into eye-witnesses. Anjani appeared to have embellished his evidence in certain respects but to the extent, his evidence was supported by that Miss Ahuja, there was no difficulty in accepting that part of his evidence.

The conflict of the opinion given by two medical experts, His Lordship said, had given rise to considerable difficulty. The evidence of Dr. Jhala, the Police surgeon, was, however, in agreement with the facts and circumstances established by other evidence in the case. Dr. Jhala's evidence that the injury on Ahuja's head could not have been caused by a rebounded bullet, was supported by the pre-ponderance of probabilities. His Lordship said that the trial judge was right in keeping out the opinion of the two doctors (from the jury) as to whether the injury showed the possibility of a struggle or not, as it was not a question of medical science.

On the evidence of Mrs. Nanavati His Lordship said that her letters showed her infatuation for Ahuja. They did not indicate that Ahuja had backed out of any promise of marriage. Her uncorroborated testimony of having seen

a revolver with Ahuja at Delhi which led to her warning her husband that Ahuja might shoot him could not be implicitly relied upon as she was a "self-condemned-sinner" and her evidence could not possibly inspire confidence. On her old evidence, she had kept her husband under a false illusion for more than a year and there was no guarantee that she could be telling the truth. The mother of three children having husband who had implicit faith in her, she committed the gravest breath of faith, not having a single thought for the welfare of her children. If her warning to her husband was to be eliminated, the entire defence structure providing a ground for the accused to take the revolver to Ahuja's flat would fall to pieces, His Lordship observed.

Analysing the evidence of the accused, Mr. Justice Shelat said that each of his acts right from the beginning to the time he surrendered to police was consistent with his intention to kill, and ruled out the possibility of a struggle. It was clear that the accused gave those details, without of which the theory of a struggle could not be set out, but gave no further detail which would negative it on the ground that he did not know or remember. In the result Nanavati was found guilty of the charge of murder.

NANAVATI FOUND GUILTY OF MURDER

In a judgement that took 11 hours 35 minutes to deliver, Mr. Justice Shelat, Senior Judge of the Division Branch, Bombay High Court, which heard the reference of the Ahuja murder case made by the Principal Session Judge of Bombay, dealt with exhaustively with the facts and circumstances and the legal aspects of the case.

"The accused is convicted (of murder) under section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life (fourteen years)"—Mr. Justice Shelet, announced to a hushed court room, crowded with Advocates and spectators and many others lingered anxiously in the High Court Lobbies.

Followings are the few extracts from the Judgements delivered by the High Court of Bombay in Nanavati's case.

"We disregard the verdict of the jury and find the accused guilty of the offence of murder Section 302 (of the Indian Penal Code). If necessary I am prepared to go to the extent of saying that the verdict of the jury was perverse and unreasonable and in any event contrary to the weight of evidence." The friends of the deceased and the accused, the Advocates and the Police Officers suddenly went out with excitement as the Judgement was delivered.

"There is no doubt from the record of the case that the deceased (Ahuja) blighted the career and happiness of the accused (Nanavati). As the man of courage and honour he was bound to feel, with extreme soreness, the deepest of injury that the deceased had brought on him and on his domestic life."

"There is nothing surprising in the way the accused took in avenging that injury, as perhaps many persons of his type would have reacted in a fashion in which the accused has reacted".

"But the law of the country does not permit the avenging of a wrong by taking law in one's own hands and we have to administer that law objectively, no matter how others might otherwise think".

The Ahuja murder case was referred to the High Court for decision by the Principal Session Judge, Shri R. B. Mehta, on October, 21, 1959. Judge Mehta had tried Nanavati with the help of a special jury on charges of having shot dead on April 27, 1959, Prem Bhagwandas Ahuja, Paramour of his British born wife, Sylvia.

The trial Judge had rejected as perverse "and 8 to 1 verdict of the jury declaring Nanavati *"not guilty"* of the charge of murder and of the lesser offence of culpable homicide not amounting to murder.

DEFENCE THEORY

At the Sessions trial the defence had stated that there was a struggle for the revolver and so far as Nanavati was concerned, two shots went off accidentally and that he had no intention to kill Ahuja.

The reference was made under section 307 criminal procedure court, and the defence raised a preliminary point contending that the reference was not competent.

It was contended by the defence counsel that unless the court was satisfied from the order of the reference that the jury's verdict was one which "*no reasonable party of men could arrive at*" and wherein "*the ends of justice could not be made*" the reference should not be taken up.

The arguments was that the verdict of the jury under Section 307 should be respected unless proved "*perverse*", just as under Section 423 Cr.P.C it was only a misdirection which permitted the inference with the verdict of the jury. Therefore, it was contended unless the order or reference showed that the verdict of the jury was "*unreasonable are perverse*", the High Court should not deal with the matter.

Mr. Justice Shelat said that there was no force or substance" in the preliminary objection and the answer to the argument could be found in Section 307 itself. The reference could be made by the Judge where he disagreed with the jury's verdict and when such a reference was made, the High Court could deal with it.

The Government Pleader, Shri Y. V. Chandrachud, had contended that any misdirections on the summing-up of the Judge would vitiate the verdict of the jury, and that such a verdict did not merit any consideration by the High Court.

In such a case, the High Court could exercise the powers of a Court of Appeal under Section 423 Cr. P. C.

His Lordship held that Section 307 made it clear that once the reference was made, it was for the High Court to go through the entire evidence and determine whether the verdict was "*really such that nobody of reasonable men would arrive at*". His Lordship further held in this instance, that the view of the jury had been vitiated by misdirections and non-directions amounting to mis-directions. The ends of Justice required that the verdict of the Jury be set aside.

While His Lordship was discussing this question, he said that in the reference, the Sessions Judge had suggested that the accused was guilty of the offence of culpable homicide not amounting to murder. His Lordship referred to various decisions in this connection and said that this Court was not bound by the opinion of the Sessions Judge, as the jury's verdict was vitiated because of midirections of the same Judge.

After it was found that the verdict was perverse, and it could be set aside, the powers of the High Court would apply under Section 307 Cr. P. C.

Mr. Chari had contended that according to the reference, the Sessions Judge had agreed with the verdict of the jury that the accused was not guilty of Section 302 I. P. C. and that he had only disagreed with the verdict of the jury in regard to Section 304 I. P. C.

His Lordship opined that under Section 307 Cr. P. C., it was clear that not withstanding the Sessions Judge's opinion that the accused had committed a lesser offence, the entire case was before the High Court. Though the High Court had to give "*due-weight*" to his opinion, it did not fetter the powers of the High Court to convict or acquit the accused of any offence of which the jury might have found him guilty or not guilty. His Lordship said that the contention that the Sessions Judge had agreed with the verdict of the jury in regard to Section 302, I. P. C. was not correct as the reference itself showed that the perversity complained of was in respect of and common to both the verdicts.

Justice, Shelat said that after having decided the High Court had the power to disregard the jury's verdict where it was vitiated by misdirections and non-directions, the question arose as to whether the jury's verdict in this particular case was so vitiated.

The first mis-directions according to the Government Pleader he said, was the failure of the Sessions Judge to point out that the burden of proof for the defence theory of a struggle and accident lay on the accused under Section 105 of the Evidence Act. His Lordship said that there was no dispute that the trial Judge had not made any reference to Section 105 in his summing-up.

The Jury was, thus, left totally unaware that although the burden of proving the charge against the accused was on the prosecution, the burden of proving the circumstances supporting the theory of accident lay on the Defence, Mr. Justice Shelat stated.

The Prosecution had contended that it had established four main ingredients of its case which made the accident theory highly improbable. His Lordship said that the fact that the prosecution had established those factors coupled with the statutory presumption of the guilt of the accused under Section 105 of the Evidence Act, would

lend considerable support to the Prosecution case in showing the intention of the accused to commit murder.

The exception under section 80 I.P.C. threw the burden of proof of "*the accident*" on the accused. If the Prosecution proved its case, the accused would be held guilty unless he established that he was entitled to the exemption available for an accident."

The Government Pleader said the Prosecution had established it a case that it was the shots from the revolver held by the accused that had killed Ahuja.

The Sessions Judge had erred in not clearly putting to the jury which of the two incidents—the information conveyed to the accused by his wife at 1-30 p. m. on April 27, 1959 or the incident reply said to have been given by the deceased to the accused furnished the "*grave and sudden provocation*", it had been pointed out by the Government Pleader.

His Lordship remarked that it seemed as if both the Sessions Judge and the Public Prosecutor had assumed that the information conveyed by the wife at 1-30 p. m. on the fatal day amount to "*grave and sudden provocation*". The Government Pleader, however, had contended that such information would not amount to grave and sudden provocation and, therefore, the learned Sessions Judge was in error when he told the jury that the entire question was one of fact.

His Lordship said that the question always was whether the provocations was sufficient to deprive the persons of self control, and whether he would commit the act under an impulse. This question of adequacy was a question of law to be decided by the Judge and this should not have been left for the jury to decide, His Lordship ruled.

The Government Pleader had stated that the Sessions Judge had abdicated his function in allowing the jury to decide the question of accident on the strength of which the Defence had claimed the benefit of the genieral exemption under Section 80 I.P.C.

His Lordship explained the provisions of Section 80 in the context of the various acts of the accused beginng from the drawing of the revolver and ending with the abuse huled by him at Ahuja. The Sessions Judge was clearly in error when he failed to direct the jury on the question of law that Section 80 I.P.C. was not applicable to the facts of this case, he said.

Another misdirection pointed out was in regard to the evidence of the watchman, Puran Singh. There could be no doubt, His Lordship said, that the impression created upon the jury by these misdirections was that the case solely depended on circumstantial evidence. As such the jury had to apply to the evidence, the same test as they would apply to a case of circumstantial evidence. The entire approach to the evidence was "not correct".

His Lordship then referred to the letters written by Mrs. Sylvia Nanavati to Ahuja. According to the Government Pleader, the following three inferences were possible: (1) That the deceased had not backed out of the promise of marriage with Sylvia; (2) That by April 17, 1959, Mrs. Nanavati had made up her mind to break her marriage with the accused and nothing seemed to her more important in life than marriage with Ahuja; and (3) When Nanavati deposed that he told his wife on April 27, 1959 that he would settle the matter with Ahuja, Mrs. Nanavati had not tried to dissuade him by saying that Ahuja might shoot him.

The Sessions Judge did not refer to these letters and had he done so in his charge to the jury, it might have taken a different view of the defence story. The omission to refer to these letters in the charge was a non-direction amounting to a misdirection.

Referring to the evidence of Puran Singh, the watchman of Jeewan Jyot where Ahuja lived. His Lordship said that it was clear that Sub-Inspector, Phansalkar to whom the information of the incident was given commenced investigations of the case on hearing the statement of the watchman. It was not necessary that Puran Singh's statement should have been recorded immediately. S. L. Phansalkar on receiving information of a cognisable offence had thought it his duty to proceed immediately to the scene of the offence instead of recording the statement of Puran Singh.

Mr. justice Shelat said that besides these mis-directions and non-direction, there were others also and these mis-directions were enough to vitiate the verdict of the jury. Their Lordships were, therefore, entitled to go into the evidence of the case and decide as to whether the verdict was affected by these mis-directions and non-direction, he claimed.

Puran Singh, His Lordship said, was the watchman of the entire building in which Ahuja occupied a flat. In the cross-examination of Puran Singh, suggestions were made that this witness had conspired with the servants of Ahuja, that he had no contact with the accused, and that he was giving evidence so that it would in line with the testimony of Ahuja's servants, Anjani and Deepak. His Lordship said that Sub-Inspector Phansalkar might have thought it more imperative to go to the scene of incident than record the watchman's statement. The police officers were busy at the scene of offence, and it was a fact that Puran Singh's statement was record at 9-30 p. m. that night.

From the evidence of Puran Singh it was clear that the first reaction of the accused was to surrender to the police. The accused preferred to surrender to the police rather than be detained. Two facts were admitted even by the defence, namely, that the watchman met and tried to stop the accused and that the accused had talked with Puran Singh. His Lordship was of the view that there was nothing surprising if the accused had talked with the watchman.

His Lordship said there was no evidence that Puran Singh was particularly friendly with Ahuja. Neither Anjani nor Deepak had deposed to any extra-judicial confession said to have been made by the accused to the watchman. If there had been a conspiracy, the two servants would have stated that they had heard the statement attributed to the accused.

From the facts also, it would appear that there was no chance of Puran Singh and the two servants meeting and conspiring before the statement of Puran Singh was recorded by the police, and there was no evidence of the watchman having talked to Miss Ahuja that night. His Lordship added that the evidence of Puran Singh contained certain intrinsic features which negated the suggestion of either conspiracy or tutoring.

Puran Singh, His Lordship said, did not try to exaggerate nor did he say that the accused had tried to run away.

Further, one test that could be applied to the evidence of Puran Singh was how this witness could possibly know by the time he gave this statement to the police that night there was an affair between the accused's wife and Ahuja.

Turning to the evidence of constable Desai, His Lordship said that the accused had met Desai and from his statement, the accused could not have been in a stunned or dazed condition. The conduct of the accused was again that of a man who was conscious of the nature of the injury; he was anxious not to conceal it and desired to go to the police and surrender.

The accused asked Constable Desai to take him to the police station, and His Lordship said that there was element of remorse or repentance on the part of the accused. He had not, at the same time, said that an unfortunate accident had taken place. So far as the accused was concerned, like all men of honour, knowing what he had done, he thought of surrendering to the police.

The first reaction of the accused, if an accident had taken place, would be to report about it to the very first constable he met. He went to the Provost Marshal Commander Samuel.

Before discussing the evidence of the Provost Marshal of the Indian Navy, Commander Michael Samuel, His Lordship referred to the powers of the Provost Marshal and the application of Section 25 of the Evidence Act, His Lordship held that the Provost Marshal's powers were not like that of a police officer, but that his powers were restricted.

His Lordship then referred to the evidence of Commander Samuel and said that the statement of the accused to this witness that "*something terrible had happened*" and that he "*thought that he had shot a man*" was not spontaneous, but in response to four questions put by Commander Samuel. To the question "*how it happened*", the accused replied that the man he shot, had seduced his wife and that he could not stand it. His Lordship said that it was clear that the accused was aware that he had shot a man. He did it because that man had seduced his wife and he "would not stand it". The statement of the accused to Samuel thus furnished both the admission of shooting and the motive or reason. And from the fact that he had assigned the reasons, it was shown that he was fully conscious of what he had done and felt that he had a good and justifiable ground for doing so.

The thought persisted in the accused's mind from the very beginning that he had grievance and he had avenged it. The desire to surrender to the police which he had

expressed to Puran Singh and constable Desai still persisted when the accused went to Commander Samuel. The refusal to go into Commander Samuel's flat though invited thrice was the result of the same anxiety of the accused to go to the police without any delay, and the consciousness of the act he had done.

That refusal also meant that he had nothing further to add to what he had already told Samuel.

It was clear that the accused had no thought at this time that he had a struggle or fight with a man whom he had shot, nor did he think that the shot was "*accidental*". If he had any such thought, the first thing he would have done was to state that the unfortunate incident was an accident.

In his examination-in-chief, Samuel had stated that the accused appeared to be dazed at this time, but His Lordship said that the acts and conduct of the accused negatived that mental state.

The accused drove his own car, answered the questions put to him by Samuel and took care to hand over the house-keys to Samuel realising that he would not return after reporting to the police and that his wife would be put to inconvenience if the keys remained with him.

It was for the first time in cross-examination that Samuel stated that the answers of the accused were disjointed and incoherent, that he heard the word "*fight*" and that he heard other words also but could not make any sense out of them.

In his reply to the Court under Section 242 Cr. P. C., the accused had stated what he told Samuel but he did not say that he had told Samuel about a fight or struggle for the revolver. When his examination continued, the accused charged to say that he had not told Samuel that he had shot a man. Even then the accused did not state that he told Samuel that there was a fight or that the fight was for a revolver.

Samuel did not say that he had asked the accused why he had gone to Nepean Sea Road, and in his statement the accused also did not say that Samuel put him any such question. The answer of the accused that the man had seduced his wife and that he would not stand it was one of motive or reason, and realising this, the accused in his evidence tried to give a twist to the answer he had given to Samuel and said he had a talk about a fight. His Lordship

thought that Samuel was trying to embellish his evidence by adding in cross-examination that the accused had told him about the "fight".

His Lordship referred to the evidence of Deputy Commissioner Lobo, that the only thing Samuel said on telephone was that he had directed the accused to surrender to Mr. Lobo, since the accused admitted that he had shot a man, and that the accused was driving in his own car. The accused arrived within a few minutes, and Mr. Lobo directed Inspector, Mokashi to investigate the offence. As regards the mental state of the accused, Mr. Lobo had stated that he found the accused in a pensive mood. His replies to questions were to the point. Mr. Lobo found no cuts or tears on the clothes of the accused and no visible signs of any injuries.

His Lordship said that there was no reason why Mr. Lobo's words should not be believed. If Samuel had stated that there was a struggle, Mr. Lobo would not have asked Inspector Mokashi at once to take the accused in custody without further inquiry. If there had been even a hint about an accident, Mr. Lobo would not have directed Inspector Mokashi to arrest the accused.

His Lordship dismissed the contention of the defence that this did not amount to admission or confession and said that it was a statement as direct and straight forward as the accused would make after having known that Ahuja was dead. Although there was a discrepancy between the evidence of Commander Samuel and Deputy Commissioner Lobo. His Lordship said that it did not prove that Mr. Lobo had made an incorrect statement, Mr. Lobo's statement was corroborated by his conduct. If the accused had used the word "*fight*" to Samuel the latter would not possibly forget to mention it to Mr. Lobo. His Lordship added that the statement of the accused reported by the police was corrected by him before signing it, and this furnished another piece of proof that the accused was not in a dazed condition. The evidence of the witnesses showed that upto the time, the accused saw Mr. Lobo, his impulse was that having done what he thought was right, he had to take the consequences.

His Lordship then dealt with the evidence of Capt. Kohil, Captain of the I. N.S. "Mysore", and said that the accused had drawn the revolver on a false pretext. His loading the revolver immediately thereafter indicated that

it was not drawn for any future use to commit suicide but for some immediate use.

His Lordship also referred to the evidence of Lt. Commander Cooper, the gunnery officer, and said that both Capt. Kohil and the Lt. Commander had virtually pleaded ignorance of the regulations in regard to the issue of a revolver, and added that if this revolver had not been issued as Cooper admitted that it could not be issued (for private use), then this tragedy might not have occurred.

His Lordship referred to the irregularities in the log book and the small arms register. The fact that the accused was discussing some business in connection with the ship to His Lordships mind indicated that the action of the accused showed a calculated deliberate intention to get the revolver and load it fully.

His Lordship dealt with the evidence of Mr. Taneja, Sales Manager of Universal Motors of which the deceased was the sole proprietor and said that the importance of Shri Taneja's evidence lay in the fact : (1) that the accused was calm when he came to Ahuja's Show-room and (2) that not finding Ahuja at the office, the accused pursued him to his residence.

In his evidence, Mr. Taneja had stated that he had not noticed any brown paper packet with the accused. His Lordship said that it might be possible that Taneja might not have noticed the packet but it had not been shown by the Defence that the accused did not carry it.

Dealing with the "Jeevan Jyot witness", Miss Ahuja, Anjani and Deepak, His Lordship said that according to Miss Ahuja, she knew of the intimacy of her brother with Sylvia only towards the end of January, 1959. Her brother told her that he might marry Sylvia, after she got a divorce. She had also known from her servants that Sylvia was visiting Ahuja. A suggestion had been made that Miss Ahuja knew of the relationship long before.

Another suggestion made to her was that Ahuja was in the habit of drinking liquor. Miss Ahuja had admitted that she had seen her brother taking drinks but that was only on occasions.

His Lordship said that there was no evidence of Ahuja having had drinking bouts and in any case, it was "*hardly likely*" that he would mis-behave before his sister.

His Lordship ruled that the Sessions Judge had erred in not admitting the application for membership in the Cricket

Club of India made by Ahuja in which he mentioned that he was married. It was quite possible that Miss Ahuja did not know of this marriage or that she did not think it prudent to mention it when the girl concerned was happy married and a regular visitor to the Ahuja's home.

Mr. Justice, Shelat said that there were certain discrepancies in the evidence of Anjani but that they did not relate to the incident and as such were not material.

The three 'Jeewan Jyot' witnesses had corroborated each other on the fact that only 15 to 20 seconds had elapsed between the ringing of the door-bell by the accused and the firing of the shots.

They had not heard any sounds of a struggle or cries for help. If they were tutored or were telling lies, they would have claimed to be witnesses to the shooting. The discrepancies in their statements were not such as to justify the rejection of the evidence of these witnesses and specially that of Miss Mamie Ahuja.

The time of 15 to 20 seconds during which the whole incident was said to have taken place, negatived the possibility of a struggle having taken place. The discrepancies in the evidence were due to the fact that Miss Mamie Ahuja was anxious to reach her brother while the others were intent on something else, His Lordship explained.

Turning to the evidence of Bhanagay, the ballistic expert, His Lordship said that the bullet was not likely to have caused serious injury to Ahuja if it had hit some hard substance. A pressure of 28 pounds was required to pull the trigger in order to press back the hammer and eject the bullet. A struggle in which the victim was holding the wrist of the assailant would not let off the bullet and it was unthinkable that assailant's finger on the trigger, even when his grip had loosened after the first shot was fired.

Admitting the evidence of the investigating officers that there were no ricochet marks at all in the bath-room, Mr. Justice Shelat held that the head injury was caused from the back.

Treating at length the evidence of Dr. A. V. Baliga, an eminent Surgeon and Dr. R. M. Jhala, the Police Surgeon, His Lordship felt that Dr. Baliga could not have given proper evidence on the basis of photographs which did not show the depth of the wounds.

Dr. Jhala's evidence was supported by several authorities and the defence counsel at the Sessions trial in his "over keenness" had put to the witness an extract though in the same book it was stated to be "unwise to dogmatise on such points".

There was clear evidence that the three bullets could not have gone off without conscious or voluntary action on the part of the accused. It was impossible to postulate two positions of the left hand during the struggle which alone would fit into the defence theory regarding the wounds.

The injury on the back would not have been caused on the inside of the right shoulder blade during a "*bang on the door*". It was therefore more reasonable to assume that it was caused when the victim slumped in the bath-room. The theory that there was no struggle was supported by the fact that the spectacles of Ahuja lay near his feet intact and the bath towel was still wrapped round his waist after he slumped. One chappal was lying in the bath-room and the bath-room windowpane was smashed. There was total absence of any indication of a struggle on the person of the accused and no cuts or tears or blood-stains were found on his clothes. Anjani, the servant, found the accused standing facing the bath-room and the accused did not mention an accident to Miss Ahuja in spite of being asked a leading question or later to Constable Desai.

In the context of his anxiety to rush to the police, His Lordship held it probable that the accused shot Ahuja first as soon as he entered the bath-room, when Ahuja, who was combing his hair at the dressing table, turned round on seeing him enter in the mirror. The chest injury was consistent with this theory and the subsequent shots were fired as Ahuja ran into the bathroom to escape through the other door leading into the drawing room.

The reason given by Nanavati for going to the ship—to get the medicine for the dog—was clearly unbelievable. The first thing he asked when he went to the ship was to ask for a revolver.

Sylvia was extremely set on marriage. His Lordship said that two questions arose—would the accused ask her whether Ahuja was prepared to marry her and look after the children and would Mrs. Nanavati persuade him not to go to Ahuja's residence ?

The accused had said that nothing was left for him in the world and if Ahuja gave a favourable reply, he would commit suicide. It was not possible to accept such a version. He had pointed out that he had implicit faith in her till now and his probable conduct would be to give her the freedom she desired. It was not possible that he would have entrusted the children to the care of his adulterous wife and her paramour. The accused had his parents and brother to whom he could have entrusted the care of his children.

With reference to Sylvia's evidence that she had seen a revolver with Ahuja at the Asoka Hotel, in Delhi, Mr. Chari had pointed out that Ahuja was likely to be well-protected. The revolver was inducted in her evidence as an excuse for the accused having gone to Ahuja's flat with a revolver.

No question had been put to Miss Mamie Ahuja whether her brother had a revolver and whether she had concealed it. If Ahuja had taken a revolver to Delhi, he was likely to keep it at his house. The police had found letters and other documents in his flat, but they had not found any fire-arm. It was stated that Nanavati had not taken the revolver to Ahuja's showroom. But Taneja's table was near the door and Nanavati could have gone back to the car and fetched it.

If Nanavati took the revolver to Ahuja's flat for self-protection, one expected that he would keep it near at hand. Ahuja could not have known that there was a revolver in the opaque packet. Anjani who had opened the door, had not observed it.

It was possible that the accused might have abused Ahuja but the question was whether Ahuja uttered the words ascribed to him ?

His Lordship said that it was impossible to believe that the first and third shots were involuntarily fired and that the accused did not hear one of the shots go off.

Another fact which made the theory of struggle unbelievable was that the towel was around Ahuja's waist. A struggle for a revolver was bound to be a deadly struggle. It was also impossible that the glasses did not fall down in the bath-room, but between the bath tub and the wash stand. It was probable that they fell off when Ahuja slumped and they were inconsistent with a struggle.

The accused had also not answered Miss Ahuja's

question, "what is this ?" This was a natural question just as it was equally natural to say that an unfortunate accident took place.

Admiral Katari had deposed that the accused was not a rash or cowardly man, but on the contrary a calm man, Mr. Justice Shelat said that the Prosecution was not interested in denying the testimony of Admiral Katari. Commodore Nanda had deposed that the accused was a good shot. But shooting at inanimate objects was not the same thing as shooting at moving objects.

Sylvia's Letters

Dealing with the evidence of Sylvia, Mr. Justice Shelat said that she had admitted that no final decision of marriage was made between her and the deceased. The letter of April 17, 1959, showed that there was a understanding between Sylvia and Ahuja that they should not meet each other for a month during which period Sylvia could think whether she should marry. If he had given her a chance to decide, it was improbable that Ahuja would use the words ascribed to him by the accused.

With regard to Sylvia's statement that Ahuja had told her that he was married to one Pam Dhawan, Sylvia, having destroyed her own happiness, had no regard that her allegation was likely to destroy the happiness of two happily married people.

The letters of another woman, were introduced in evidence by Mr. Chari to show that Ahuja had intimate relations with her and that a man who chose a dangerous way of life might have kept a gun. The letters appeared to be from a woman who was bored by a quiet life. They did not indicate any intimacy. Sylvia's letters, however, showed her intense infatuation for Ahuja and her desire to marry him, regardless of consequences to her or her children.

Sylvia did not appear to be altogether a reckless person. For even though she wrote a letter as early as May 24, 1958, She did not send it till March 1959.

Mr. Justice, V. A. Naik, one of the Judges constituting the Division Bench of the Bombay High Court, which heard the reference of the Ahuja murder case, announced that he was in agreement with the conclusions arrived at by Shri Justice J. M. Shelat.

Mr. Justice Shelat the other Judge of the Division Bench, had found 37 year old Commander Kawas Manekshaw

Nanavati, second-incommand of the I. N. S. "Mysore" guilty of the murder of prem Bhagwandas Ahuja under Section 302 of the Indian Penal Code and proposed a sentence of rigorous imprisonment for life on the accused.

The reference of the case was made by the principal Sessions Judge of Bombay, Shri R. B. Mehata, who had rejected as "perverse and eight-to-one verdict of the jury holding Cmdr. Nanavati "not guilty" of the charge of murder and the lesser offence of culpable homicide not amounting to murder on October 21, 1959.

While giving a separate judgement, Shri Justice Naik said that in view of the complexity of the crime involved in the case, he felt it necessary to set out the reasons supporting his view.

Mr. Y. V. Chandrachud, Government Pleader, with Mr. V. H. Gumaste, Assistant Government Pleader and Mr. C. M. Trivedi, Chief Police Prosecutor, appeared for the State. Mr. R. J. Jethmalani watched the proceedings on behalf of the relations of Prem Ahuja.

Mr. A. S. R. Chari with Mr. Rajni Patel and Mr. S. R. Vakil appeared for Nanavati.

Inspector, P. L. Mokashi, of the Crime Branch, C. I. D. investigated the case under the supervision of Superintendent, M. G. Korde and Deputy Commissioner John Lobo.

Deputy Inspector R. H. Kulkarni of the Naigaum police station was incharge of arrangements for the public at the hearings.

Sentence Suspended

The sentence of life imprisonment imposed on Commander Nanavati was temporarily suspended by the Governor of Bombay in exercise of powers conferred on him by Article 161 of the Constitution.

The Division Bench of the Bombay High Court, which heard the reference of the case of murder against Nanavati had issued warrant for the removal of the convicted officer from the Naval custody to the Arthur Road Prison.

Before the warrant could be executed, however, the overnight hectic activities on behalf of Nanavati had succeeded and the order of the Governor was served on the police officer in charge of executing the warrant.

The Governor of Bombay, who was then on a tour, issued the order No. H D III from his camp at Godhra in Gujarat on the same day,

GOVERNOR'S ORDER

The text of the order is as follows :

"In exercise of the powers conferred on me by Article 161 of the Constitution of India, I, Sri Prakash, Governor of Bombay am pleased hereby to suspend the sentence passed by the High Court of Bombay on Commander K. M. Nanavati in sessions case No. 22/IV sessions of 1959 until the appeal intended to be filed by him in the Supreme Court against his conviction and sentence is disposed and subject meanwhile to the condition that he shall be detained in the naval jail custody in INS Kunjali".

Mammoth crowds of the curious and the excited had collected outside the Arthur Road prison and the INS Kunjali expecting to catch a glimpse of Nanavati when he was being removed to the jail to undergo the life term. The officers of the city police were themselves expectantly waiting at the High Court premises to transport Nanavati to the prison.

The Home Secretary to the Government of Bombay had earlier contacted the Provost Marshal of the Indian Navy, Commander M. B. Samuel by a letter No. of 170/433 of March 11, 1960. Commander Samuel immediately rushed a letter stating his willingness to keep Nanavati in naval custody.

In the afternoon, it was learnt last minute efforts were made to forestall Nanavati from being removed to prison. Rear Admiral B. S. Soman, Flag Officer, Bombay, called at the Raj Bhavan in the afternoon.

It was learnt that on previous day the intervention of Shri Y. B. Chavan, Chief Minister of Bombay, was sought on behalf of Nanavati under the powers enjoyed by the Government by virtue of provisions of the Criminal Procedure Code. The Chief Minister was, however, advised against any such action by the Secretariat. Asked the opinion of the Government Pleader he was reported to have said : It is not the practice.

On next day, till the order of the Governor arrived, the entire Navy was maintaining a strict silence. The only person who gave any reply at all was Rear-Admiral B. S. Soman, "I can give you no information", he said.

A next day, of the Governor's order had also been served on Commander Nanavati.

Mr. Nehru's statement in parliament.

The undue interest of State and Central Government and interference by the executive was badly criticised by the Parliament and in a stormy debate Pt. Nehru explained the matter and admitted that, "I assume full responsibility for this advice", Mr. Nehru told a crowded House. The Governor's decision, he added, was *"not only constitutional and not improper but also not disrespectful in any way to constituted judicial authority"*.

The Prime Minister spoke on an adjournment motion, which was later ruled out by the Speaker, Mr. Ayyanger, on the ground that Parliament was not competent under the representatives of Commander Nanavati saw him and appealed for an extension of the naval custody of the Commander. He was informed that if Commander Nanavati was sent to a prison for any period, then under the rules of the Navy, his future would be affected.

The Prime Minister, thereupon consulted the Law Minister, who advised him that it would be in order for a section of the Constitution to be invoked to suspend the execution of the sentence for the slight gap of period till the application for appeal to the Supreme Court was disposed of.

Mr. Nehru said that he then got in touch with the Chief Minister of Bombay and, later, with the Governor. He advised the Governor to consult the Chief Minister. The Chief Minister was *"good enough"* to accept his advice and advised the Governor accordingly.

Prime Minister Nehru told the Lok Sabha that he had given informal advice to the Governor of Bombay and to the Chief Minister to suspend the High Court's order against Commander Nanavati till such time that his leave for appeal to the Supreme Court was disposed of.

Intervening to explain the position in reference to the admissibility of an adjournment motion on the subject, the Prime Minister said that such advice was of an informal nature not coming within the purview of Article 256 of the Constitution.

The Governor of Bombay had full jurisdiction and right to act under Article 161 of the Constitution and therefore the informal advice given by him after full consultation with the Law Minister, Mr. Ashok Sen, should not be interpreted to be any directive to the State Government or to mean any disrespect to the judiciary.

The Prime Minister, Mr. Nehru, told the Lok Sabha that the Centre advised the Bombay Government in regard to the issue of the order by Bombay Governor in regard to Commander Nanavati.

Speaking on an adjournment motion seeking to discuss the "suspension of the sentence on Commander Nanavati, who has been held guilty of a heinous crime", Mr. Nehru said : "The responsibility for the order lies with the Governor in on the advise of the Chief Minister of that State. In effect, it was our advice and it was for them to accept it or not. We advised that the suspension should be till the disposal of the application for leave to appeal to the Supreme Court which meant only for a brief period. It is constitutional. There is no impropriety in it and there is absolutely no disrespect to constituted judicial authority."

Mr. Nehru said that the Centre gave advice to the Bombay Government after representative of Commander Nanavati approached him in the matter.

Opposing the motion, Mr. Nehru said : prima facie, of course this matter does not concern this House. Nevertheless, I can understand what members should be exercised about what they may think to be an unusual occurrence."

Stating that he would like to give the House "facts in so far as we are concerned about this matter", Mr. Nehru said : The House knows that Commander Nanavati was tried at length and by a very considerable majority of the jury he was held not guilty. Thereafter, the (Sessions) Judge referred this matter to the High Court and the High Court has come to the decision that he was guilty of the charge made against him. Even though they (the Judges) paid, I believe, a compliment to the Commander as an officer for his ability, they (Judges) said quite rightly the law must have its course. Now, obviously, the law must have its course and nothing that the Bombay Government or the Central Government may say or do should come in the way of the law having its course. Nothing, if I may say so, was under contemplation of any Government which might indicate any disrespect to the Bombay High Court or Judges."

"On the late evening of March 10" Mr. Nehru added, "I came to know that the judgement had been delivered almost completely only a small bit left—in this case by the Judges of the Bombay High Court. That day some representatives of Commander Nanavati had approached

some representative of the Bombay Government and told him that they proposed to prefer an appeal to the Supreme Court. They appealed to the Bombay Government to suspend the sentence till this application for appeal was considered. It was a matter of some days, not a long period, and there was a gap period in between. The Bombay Government representative told them it was an unusual procedure and they would like to have the opinion of the Central Government and asked representatives of Commander Nanavati to approach the Centre.

Mr. Nehru admitted that "there was a written application on their behalf. Then they came to me late in the evening of March 10. Since this was a legal matter which was not wholly within my ken. I asked them to see the Union Law Minister. I myself got in touch with the Law Minister and requested him to go into this matter and advise me. The Law Minister was good enough to go into it and on the forenoon of March 11, I had a talk with the Law Minister. Law Minister's reply was that there is going to be an appeal to the Supreme Court. The matter will go up before the Bombay High Court for permission and it will be for the Bombay High Court or the Supreme Court to consider this matter from the point of view of giving extension to naval custody. It was the original order of the Bombay High Court for naval custody. But there was a slight gap period between this decision of the Bombay High Court and the decision on the application for leave to appeal. We were concerned with that period. "I was informed that in case Commander Nanavati was lifted to prison for this period now under the rules of the Navy, his future would be affected. The Law Minister, therefore, advised me it would be completely in order for that section of the Constitution to be used to suspend the execution of the sentence for this period—till the disposal of the application for leave to appeal to the Supreme Court".

Mr. Nehru said that he agreed with Law Minister and then got in touch with the chief register of the Bombay Government over the telephone and told him "this was our view"

Mr. Nehru added, "I also got in touch with the Governor of Bombay and told him and asked him to consult the Chief Minister. That is in so far as we know. Naturally, I assume full responsibility for all this. The Chief Minister

was good enough to accept our advice and the Governor issued that order. The responsibility for this lies with the Governor on the advice of the Chief Minister. In effect, it was our advice, and it was open to them to accept it or not.

"I do submit that there is no element of going against the Constitution. It is strictly within the Constitution. We advised that the suspension should be till the disposal of the application for leave to appeal to the Supreme Court which meant relatively a brief period. After that, the matter will be considered by the High Court and the Supreme Court. If the appeal is admitted, that moment the High Court or the Supreme Court can consider independently of this order, extension of the period of naval custody. I cannot say what they will be pleased to decide. It was that short period that was intended to be covered."

The Speaker : What is the jurisdiction of the Central Government to advise the Governor ?

Mr. Nehru : The Central Government is constantly in touch with the Chief Minister. The matter was referred to us indirectly by the Chief Minister and we gave him our views on the subject.

The Speaker, Mr. Ayyanger said that while he could allow discussion on matters for which the Central Government was responsible to the House, he could not do so with regard to other matters, however, important they might be, for which the Central Government was not responsible. If under the Constitution, the Central Government was competent to give advice, then he would certainly go into the matter.

He said that Mr. Mahanty had raised a point of order and drawn attention to Article 161 of the Constitution under which the Governor could grant pardon. In regard to the suspension it was the Governor who had intervened and he was competent to do so under Articles 161. It was exactly because the Prime Minister had given that the adjournment motion had been brought before the House. He said that he would treat that advice as only departmental advice and not given under the Constitution.

Law Minister's Reply

The Law Minister, Mr. A. K. Sen. explained the relations between the Centre and the States. He said that these had been set out in Article 256 of the Constitution, but he made it clear that the present advice was not within

the purview of that article. It is an advice which, in the course of the functioning of the two Governments, is always given in the day-to-day administration of the Centre and the States. Unless there is any prohibition in the Constitution, I presume there is no constitutional impropriety in the Prime Minister or the Home Minister or the Central Government giving advice on any matter which may fall even exclusively within the jurisdiction of the State. It is open to the state to accept or not such advice.

The Law Minister intervened and explained that the advice was purely informal and not under the purview of Article 246 of the Constitution. Such advice was more often sought and given to the State governments not only in cases of trial and punishment but in exclusively state matters like agriculture and education.

"In regard to many State subjects which are exclusively within the State jurisdiction like agriculture and education, the Centre gives advice extensively and regularly. This advice may be accepted or not. This (pardon) is a matter falling purely within the routine administration of the State and the State wanted to have the view of the Centre. The Prime Minister gave his views and it was open to the State Government to accept them or not. The State Government has accepted them in this case".

Mr. Sen added : "I suppose the day will never come when the Central Government will refuse to give advice to the States in regard to matters falling within the exclusive jurisdiction of the States".

In reply to a question by the Speaker, Mr. Sen reaffirmed that no directive was given to the Bombay Government under Article 256 of the Constitution.

Mr. Ayyanger then held that the House had no competence to go into the matter which was exclusively within the jurisdiction of the Head of a State (Governor) who, he said exercised his discretion.

Mr. Nehru said that what the Speaker had been pleased to observe was perfectly correct. But, such cases rarely arose. In the broad acceptance of the term advice under the Constitution communications between various Ministers in the Centre and States was a daily occurrence. They did not mean direction. Rather, it was an attempt to help each other advices were sought from either side. It was a two-way traffic. But, to suggest that there should not even be

informal advices but only directions was exceedingly embarrassing.

Mr. Nehru clarified that the suspension of sentence on Commander Nanavati was intended only to cover the period till the disposal by the Bombay High Court of the Supreme Court of the petition for leave to appeal and not until the disposal of the appeal.

Mr. Nehru, who answered a volley of questions of his monthly press conference on the propriety of the Government's action, gave a detailed sequence of the events leading to the Government's order. Mr. Nehru disclosed that it was the Chief of Naval staff, Admiral Katari, and not any relative of Nanavati who approached him on March 10 on behalf of the accused.

The Prime Minister said that in adopting the course it did, the Government had not intention of interfering with the course of justice or showing any disrespect to the course. He conceded that "*some other course might have been the better course*" but said, they had adopted this method because it was a relatively simple course not involving any disrespect to the High Court.

A correspondent asked Mr. Nehru to clarify the contradiction in Mr. Nehru's statement in the Lok Sabha that the suspension order of the Governor was intended only to cover the short period till the disposal of the petition for leave to appeal to the Supreme Court, and the actual language of the Governor's order suspending the sentence till the disposal of the intended appeal to the Supreme Court.

Mr. Nehru : You are perfectly right in pointing out that distinction. That was our idea and I suggested it to the Chief Minister. I have not seen the order. But it (the suspension) is to be till the disposal—this way or that—of the leave to appeal to the Supreme Court. Afterward it is for the courts to decide.

Replying to further questions, Mr. Nehru said that the suggestion for suspension of sentence made by him will "till the disposal of the application for leave to appeal either by the Bombay High Court or the Supreme Court", and not till the disposal of the appeal. The law officers of the Bombay Government who had actually drafted it, might have used a particular language, but that was not the intention. "What is really meant is till the disposal of the application".

Q. Who were the representatives of Commander Nanavati who spoke to you on this matter ? It has been said in the press that they were not his relatives.

Mr. Nehru : For once the press was right. If you want to know, it was the Chief of Staff of the Navy, who came to see me and he told me that Commander Nanavati had sent an application to the Flag Officer of the Indian Navy in Bombay, making this request. The Flag Officer thereafter had approached the Bombay Government. The Bombay Government said—I do not know exactly what they said—but they said that they would consult the Central Government informally of course. The Flag Officer of the Indian Navy in Bombay then reported it to the Chief of staff of the Navy here who thereafter came to see me.

Q. You must have seen the countrywide criticism of the Government's action. You must also have noted Mr. Thagi's statement in the Lok Sabha that, if at all, the Government should have amended the Navy rules and not adopted this course what have you to say ?

Mr. Nehru : I can hardly discuss it. May be some other course might have been the better course, but this seemed to us a relatively simple course and not involving any disrespect to the High Court.

Q. What is the reason for this extraordinary interest taken by the Government of India in this affair right from the beginning—from the time of the committal proceedings right through the sessions trial and till now, including the payment of money to Nanavati for defraying his expenses ?

Mr. Nehru : I do not know why you have brought in the Government of India. It was natural for the Naval staff here to take interest in one of their senior colleagues.

Q. No, it was the Government of India that sanctioned nearly Rs. 17,000 or so for meeting the cost of his defence.

Mr. Nehru : I do not know the sum but that is usual. I am speaking from memory. Commander Nanavati applied to the Government that it should meet the cost of his defence, as often the Government does when its people are involved. The reply sent to him was that the Government could not meet the cost of his defence in a case like this, a personal kind of case I am not aware of the sum but I said we can give a little help as he was not in a financial position to engage lawyers. We said, we can

give a little help to have a proper defence, but we cannot undertake the liability of his defence.

Q. Will it be open to the Army also to claim custody of its criminals ?

Mr. Nehru : I do not know how you can say this. It is a hypothetical question. You must remember Commander Nanavati was kept in Naval custody by order of the Court. He was in Naval custody. It seems to me that there is nothing very extraordinary about this. We may be right or wrong.

Q. Would not the proper course have been for Nanavati lawyers to apply to the Bombay High Court, explain the difficulties that would arise to Nanavati in his career if he were ultimately to be acquitted by the Supreme Court, and apply for Naval custody ?

Mr. Nehru : When the matter came up before them for leave to appeal to the Supreme Court...you must remember there was an interregnum of a few days.

Q. There would have been no trouble if the Government had exercised its prerogative after the judicial processes had been completed. But here you had been approached and advice was given even before the High Court had completed its judgement.

Mr. Nehru : I was approached on the night of March 10. One of the Judges had completed his judgement while the other had indicated his mind but his judgement was still to be completed. It was fairly clear what the position was. It was at the stage.....

Q. If you were to proceed on the basis of indications, the indication that Nanavati would be convicted was available even a week earlier when the High Court had not called upon the Government advocate to reply to the defence arguments. But the judgement was completed on the 11th morning.

Mr. Nehru : I am sorry. I do not know about earlier indications. I have not been reading the evidence arguments etc. I have been only looking at the headlines in the papers on this case. I was approached only on the night of March 10.....

Q. The Governor could order suspension of the sentence. How could he order Naval custody ?

Mr. Nehru : It was a continuing custody. He was already in Naval custody under the orders of the Court. The point is whether a person, in suspending the sentence,

could make it conditional? I am not speaking as a lawyer, but presumably the conditions could be imposed. It is short of the power to suspend.

Q. You said a representative of the Navy approached you on behalf of their senior colleague. Will the Government take same view in the case of a Naval rating?

Mr. Nehru: I hope it will. There are two or three things. Firstly, life being what is, this matter would not have aroused much interest in the newspapers if there had been a case of a rating, although he deserved exactly the same treatment. The same consequences would not have flown also to a rating that would to an officer, according to Navy rules.

Q. Is this anxiety to retain Commander Nanavati in service based on the fact that he has some special training and qualifications or is it something else?

Mr. Nehru: I may tell you in confidence that I hardly know Commander Nanavati. This is to say, I have met him as I have met senior officers but nothing more. I have had reports about his work and he is considered one of our good officers. But I have no particular interest in him, personal or otherwise. It was clear that in this case, the courts must decide the issue and we must submit to it—there was no question about it—but the point was that if there was an outside chance of a decision ultimately in his favour, it might be worth while having him in naval custody during this period. It did not strike me at that time or when I consulted the Law Ministry as something unusual or wrong. Unusual it was, but nothing wrong.

Q. Does not the whole thing cut at the very root of the rule of law which requires that anyone, however high he may be, in the Navy or otherwise, should be subject to ordinary civil law and procedure and take the consequences?

Mr. Nehru: How does this (action) cut at the rule of law? There is such a thing as the constitution and the constitution has provided a means by law to do something. I do not wish to argue this. You may say it was not wisely conceived. But to say that it cuts at the very root of the rule of law... I cannot understand it. It seems extraordinary to say that the rule of Law has been challenged. It is completely under the law.

Q. When the Law Minister gave you the advice, did he tell you it was constitutional or also it was desirable?

Mr. Nehru: There was no question whether it was

constitutionally correct or not. I was not issuing any directive or anything to the Governor. I spoke to the Chief Minister....I do not think it will be proper to bring in what advice the Law Minister gave me. But the constitutionally of it was obvious to me and to him. Having considered this matter in all its aspects, we came to a certain conclusion that we should give a certain advice and we did so. There the matter ends.

Full Bench Hearing :

The decree of the Governor of Bombay, suspending the life sentence passed on Commander K. M. Nanavati by a Division Bench of the Bombay High Court and allowing him to continue in naval custody pending the disposal of his appeal by the Supreme Court, does not involve any conflict between the judiciary and the executive.

This argument was advanced by the Advocate-General, Mr. H. M. Seervai, before a Full Bench, consisting of five Judges of the Bombay High court, when it met to consider the "*unusual situation*" created by the return of the unexecuted writ and warrant of arrest issued by the High Court in the Nanavati case.

The Chief Justice, Mr. H. K. Chainani, who presided, said that the two main questions before the Court for decision were whether the Governor's decree was valid and how the writ issued by the High Court could be made effective.

Mr. Seervai contended that the Court could not go into the validity of the Governor's decree as the issue before the Court was the return of the unserved writ and warrant.

The Advocate-General said that the Governor's order, issued in exercise of his executive authority, was incapable of judicial review. In any case, the Governor was not before the Court and under Article 361 of the Constitution, he could not be brought before it.

The order of the Governor did not involve any disrespect to the judiciary and had not interfered with any judicial process, he submitted. His argument was not over on that day.

The Full Bench consisted of the Chief Justice, Mr. H. K. Chainani, Mr. Justice, J. R. Mudholkar, Mr. Justice S.

T. Desai, Mr. Justice K. T. Desai and Mr. Justice B. N. Gokhale.

Commander Nanavati was not brought to the court room. The surging crowd trying to get entry into the court-room interrupted the proceedings for some time in the morning.

When the Court met at 11 a. m. Mr. R. B. Kotwal with Mr. M. V. Paranipe wanted to put in their appearance on behalf of the Western India Advocates' Association, Mr. H. M. Seervai, Advocate-General of Bombay, who appeared for the State of Bombay, opposed the application and said that the procedure adopted in a case of similar nature before the High Court of Madras should be followed. The issue involved in that case was of a more acute form, the sentence passed on all the accused in the case being remitted when the case was pending before the High Court. There, the Advocate-General was asked to appear before the court to explain the position in law. There was no amicus curior appointed.

Mr. Seervai contended that the law officers of the State appearing before the court would render all possible assistance. Further, this was a criminal case between the State and the accused.

When the Chief Justice remarked that they might also like to appear, the Advocate-General said that it presupposed "we are not going to address the court on the issue fully". The Chief Justice, however, replied: "We expect you to assist us in all respects." The Advocate-General said that he did not represent one point of view.

Mr. Justice S. T. Desai asked if this court could not lay down its own procedure without following the procedure followed in Madras. The Advocate-General said that a question of the same kind had arisen before another chartered High Court and he pointed it out as it would be of some assistance to this Court.

Mr. Justice Mudholkar said that the legal profession was interested in presenting its own point of view in this issue. Mr. Seervai replied that no association could discuss the matter without committing contempt of court. Replying to a query of Mr. Justice Gokhale, Mr. Seervai said that in the case before the Madras Court there was no other representation as far as the records showed. Mr. Seervai submitted that the procedure adopted in that case should be followed. Mr. Rajni Patel appearing on behalf of

Nanavati fully supported the contention of the Advocate-General. The Chief Justice however allowed Mr. Kotwal and Mr. Paranipe to appear.

The Chief Justice said that the Court had to decide two questions : (1) whether the order issued by the Governor suspending the sentence passed by the High Court on Nanavati was valid and (2) how could the writ issued by the High Court be made effective.

The Advocate-General said his answer to the second question was that the writ could not be made effective, because an authority in law, competent to deal with the matter, had exercised its powers. He said he would deal with the point in detail later.

The question as to the constitutional validity of the order, he submitted, did not arise. Because, it was an order of the Governor and Article 361—which made him not answerable to any Court for the exercise of his powers, was a complete answer. The Court could not make any pronouncement on the validity of that order, in the absence of that party.

The Advocate-General contended that on the return of the writ unexecuted, the question of going into the validity of that order did not arise. The first basic assumption of every judicial determination was that the party whose action was being challenged, must be before the Court, and the Governor could not be brought before the Court in any proceedings. Mr. Seervai said that the exercise of this executive power did not involve any disrespect to the High Court nor was any intended. The order of the Governor was that of an executive and in the absence of the Governor, it was not open to the Court to go into it to find out what the scope of that power was, whether it was exercised in his discretion and whether it was incapable of review.

The action of the Governor under Article 161 did not involve any conflict between the judiciary and the executive as their respective spheres did not overlap. The judicial function ended when judgement was delivered and order passed for issuing a warrant according to law. The function of the executive to grant pardon, reprieve, respite or remission of punishment began thereafter. It was the function of the executive Government to carry out in effect the sentence passed by a Court. It was for them to decide whether in a particular case the

powers of remission should be involved or not, the Advocate-General submitted that the power conferred by Article 161 vested in the chief executive of the State and his executive power was incapable of judicial review.

When Mr. Seervai began to discuss the law in England and the U. S. in regard to granting of pardon, the Chief Justice remarked : "We are not concerned with pardon". Mr. Seervai said that the Court was concerned with that. The power to grant pardon was linked with other powers. He said that a correct construction could not be put on Article 161 unless the power to grant pardon was discussed. The present case was a lesser form and when the sentence was remitted in a case, it meant that pardon was granted to the accused in respect of that remitted period.

When Mr. Justice Mudholkar said that the order in the present case almost amounted to granting bail. Mr. Seervai said that it was not so. The various phrases used in the articles could not have meanings different from what was contended.

Mr. Justice S. T. Desai asked if the order of the Governor in substance amounted to granting of bail pending the disposal of appeal to the Supreme Court and if that was so, whether the order was constitutional. His Lordship told the Advocate-General that this was a question we should answer not necessarily now, but at his convenience.

Mr. Seervai said that the position in law in England was that pardon could be granted in respect of an entire crime before, during and after the trial. The powers of the executive were similar in India. Just as the judiciary discharged its duty without fear or favour, the executive discharged its duty in good faith for reasons which appeared to be good to it. Power was vested in the executive in the hope that the executive would uphold, the Constitution and not subvert it. The power was given to the executive to mitigate the rigour of law where it was necessary.

It was essential for the welfare of the State and the administration of justice that such powers existed in the executive. If such a power was not given, any recommendation of a court would become infructuous. Granting of pardon would remove any disqualification arising out of conviction of offences of moral turpitude.

Immediately after the order of the Governor was issued, a communication was addressed to say that in view of the order, it was not possible to execute the writ. The State always desire that the Court should, in public estimation, enjoy the highest respect due to it. When the Chief Justice pointed out that judgement of a Court was deemed to be correct, Mr. Seervai said that the provision for pardon did not say anything about the correctness of judgements. There was no disrespect meant in any such action.

Mr. Justice Gokhale said that if the Government Pleader had mentioned about the order to the Court (the Division Bench that heard the Nanavati case), the Court would have stayed the execution of its order.

The Advocate-General said that the Government Pleader did not know of the executive action, and therefore applied for the warrant being issued.

Mr. Seervai then dealt at length with the English law to show that similar powers to grant pardon existed there. He said, identical power was given under the Government of India Act, 1935, and had now been preserved in the Constitution. Such powers had also been given to officers in the Army, Navy and the Air Force, to reprieve or commute sentences passed by court martial.

Mr. Seervai dealt with the powers conferred upon the President of India and State Governors under Articles 72 and 161 to grant pardon and to suspend, remit or commute sentences and said that no tribunal was competent to determine the question whether this was a function which the Governor should exercise in his discretion or on advice. Nor could it have the Governor before the Court to answer the question. Article 361 debarred the Court from requiring the Governor to furnish any evidence on this point. Under Article 163 (2) no action of the Governor could be challenged on the ground that he acted on his discretion when he ought to have taken advice or vice versa.

Mr. Seervai said that the State was before the Court in a limited capacity as the prosecuting authority to assist the Court in regard to the disposal of the unexecuted writ. It had not been made a party in an appropriate proceeding. The only person who could institute an appropriate proceeding was Nanavati if he did not accept the condition that he should continue in naval custody. If he desired to

go to jail then he could take appropriate proceeding making the State a party.

Mr. Justice S. T. Desai : Normally we should have expected it from him. A law-abiding citizen should have said that.

Mr. Seervai said that if Nanavati felt that his detention in naval custody was illegal he could make a habeas corpus application.

He said that the State was before the Court not to justify the legality of the Governor's order.

The Advocate-General said that his personal view was that a careful reading of Article 161 clearly showed that the Governor should exercise his power under that Article in his individual discretion. The wording of the order also indicated that it was issued in his individual capacity and there was nothing left for any inference.

He relied on a decision given by the Madras High Court in a case where the accused persons were given remission of the sentence passed on them before the case came for confirmation by the High Court had held that such remissions did not amount to interference with the even course of judicial proceedings. This case clearly showed that the power vested in the Governor could be exercised at any stage of judicial proceedings and it did not amount any interference. He also cited certain decisions in the U. S. in similar cases.

Replying to a query from the Court, the Advocate-General said he had no instructions nor had he made any inquiries about the reasons that had necessitated the issue of that order.

Mr. Justice S. T. Desai asked whether the Governor had power to suspend detention of an accused in jail if a Sessions Judge refused bail. Mr. Seervai replied that the Article provided for suspension of sentence or punishment. When bail was refused no sentence or punishment was given by the Court.

When the Governor issued the decree, the application of Nanavati for leave to appeal to the Supreme Court was pending before a Division Bench. Mr. Seervai said that it did not mean that the Governor's order had interfered with any judicial process. He had suspended the sentence till the question was determined by a competent court, that is, till the appeal was disposed of. The operation of the sentence passed by the High Court would commence as

soon as the appeal was rejected. If there was no interference with the judicial process when pardon was granted, then there could be no encroachment on the judicial process when the lesser power to suspend the sentence was exercised. The power to suspend the sentence had been provided for in the Article in express terms. But the Article did not say that the power could be exercised only if there was no pending judicial proceedings.

Mr. Seervai said that just as the power resided in the judiciary to determine any proceedings before it, the power resided in the executive to bring any proceedings to an end completely by granting pardon and also to commute, remit or suspend the punishment or sentence given by a court.

No judgement on the wisdom of the Governor's order could be pronounced as the data on which the order was passed was not before the Court.

The Advocate-General, Mr. H. M. Seervai, made a statement to that effect in answer to an inquiry made by the Court as to whether the State desired to disclose the reasons for the order. The Court, however, had made it clear that the State was not obliged to do so.

Mr. Seervai, who held consultation with the State authorities, said that his instructions were that, having regard to the fact that it was the Governor's order, made after full consultation with the Minister-in-charge (the Chief Minister) and as the Governor was not before the Court, the reasons were not to be disclosed.

He said that the reasons for the order were relevant on the question of propriety and of the rightness of the executive action.

After the present proceedings, a statement would be made in the appropriate form—the Legislature.

The inquiry in regard to the reasons for the Governor's order was made by Mr. Justice S. T. Desai on the second day of the sitting of the Full Bench to decide the validity of the Governor's decree and how the unexecuted writ of the High Court, issued in the Nanavati case, could be made effective.

The Chief Justice, Mr. H. K. Chainani, who presided over the five-member Bench, told the Advocate-General that the Court would like to go into the Navy Act also.

Besides the Chief Justice, the Full Bench consisted of

Mr. Justice I. R. Mudholkar, Mr. Justice S. T. Desai, Mr. Justice K. T. Desai and Mr. Justice B. N. Gokhale.

Resuming his arguments, the Advocate-General said that the suspension of sentence, as in the present case, did not amount to granting bail. Legislature had used different phrases in respect of suspension of sentence and granting bail. If the power of the judiciary to grant bail was to be taken as the power to suspend a sentence, it was a conditional power. But no condition was attached to the power vested in the Governor under Article 161.

His contention was that the power to grant bail was not exclusively judicial. It had been given to a police officer also who, in any case, could not be said to be a judicial authority. If two kinds of processes were available to a person to get a remedy, he was not obliged to choose a particular one of them.

NO JUDICIAL REMEDY

In the present case, the High Court had no power to release Nanavati on bail, as he had been convicted of the non-bailable offence of murder. There was no judicial remedy available to him, if granting bail was to be taken as a judicial function. Mr. Seervai, however, maintained that granting bail was not exclusively a judicial function.

Mr. Seervai said that the right to relieve from the punishment prescribed by law belonged to the executive. There was nothing wrong in the action of a sentence being stayed by an authority armed with power if other authorities had concurrent power or no power at all.

The Advocate-General said that the theory of interference was untenable, because interference meant doing something one was not entitled to do. The Governor's action did not amount to interference as he had not done anything he was not entitled to. There was no Article of the Constitution which limited the power of the Governor under Article 161. Things which appeared very extraordinary had happened in other countries and the judiciary itself had welcomed executive interference so as to enable justice to be done.

To a query from the Court, Mr. Seervai said that Nanavati being in naval custody throughout had never prevented him from being taken to the Court. Admittedly, Nanavati was not a free man and was in naval jail. The Governor's order had only maintained the status quo of

Nanavati being in naval custody. In fact, bail or release on bond would have put him in a better position.

Mr. Justice Gokhale : Can we bring Nanavati to the Court to-day ?

The Advocate-General : For what purpose ? If it is germane, you can.

He said that no person appearing for the state would ever suggest that the writ of this court would be disobeyed. Before an order issued under Article 161 could be declared invalid in pursuance of a judicial power, some provision in the Constitution must be shown on a plain reading to invalid a collision with Article 161. No limitation could be imposed on that power except by the terms of Constitution. The power under that Article was absolute and unqualified in terms.

Mr. Seervai said that there were in law three authorities charged with the power to give pardon and reprieve and commute a sentence. They were the President of India, Governors of the State and appropriate Governments. If the State of Bombay refused to commute the sentence of a person, but the President later did so, there could be no conflict of powers. Because, they were distinct powers vested in different authorities. Where the power of an executive was limited, the court could inquire if the executive had exceeded the limit. That question did not arise in the present case, as there was no limitation on the power under Article 161.

UNLIMITED POWER

Suspension, remission or respite of a sentence postulated the correctness of judgement, but only mitigated the punishment which law would otherwise inflict. The power given to the Government under Section 401 Cr. P. C. had certain limitations, but no such limitation was put on Article 161. Mr. Seervai said that there was no authority for the proposition that the function with which the Governor was charged, became the function of the State Government. He maintained that the suspension of the sentence was the order of the Governor. Even if the Court read "Government" into the word "Governor", it was an unlimited power and incapable of review.

The Advocate-General had not concluded when the Court rose for the day.

The contention of the Advocate-General of Bombay that the Full Bench of the Bombay High Court had no jurisdiction to go into the validity of the Governor's order suspending the life sentence passed on Commander Nanavati by the High Court was countered by counsel for the Western India Advocates' Association.

Mr. R. B. Kotwal, appearing for the Association, told the Full Bench on the third day of its sitting to consider the validity of the Governor's decree that the main question before the Court was whether the obstruction in the way of execution of the writ issued by the High Court in the Nanavati case was legal or not.

Mr. Kotwal said that the warrant issued by the High Court remanded unexecuted. Under Section 75 Cr. P. C. warrant issued by a Court shall remain in force until it was cancelled or it was executed.

When the warrant was returned unserved, this Court had not become "functus". The question before the Court was whether the warrant should be withdrawn and whether the obstruction was legal or illegal.

If the obstruction was legal, this Court would have accepted the order even though as a necessary evil and withdrawn the warrant, he said. If it was illegal, the Court would send back the warrant for execution. This Court would not become functus simply because the order of sentence had been passed. The present inquiry was to find out whether the warrant should be withdrawn or not.

If as a result of the present inquiry, Mr. Kotwal said, the Court came to the conclusion that the obstruction was legal, nothing further could be done. But if the conclusion was that the order was illegal, very serious consequences would follow. One consequence obviously would be to hold the person in contempt who caused the obstruction, if not the author of the order. Someone would have to be prosecuted, as an obstruction of this nature was a criminal offence.

Before taking such drastic steps, this Court had issued notice on the State and the accused. Therefore, the Court was functioning under the Criminal Procedure Code and the argument of the Advocate-General that the Court had no jurisdiction was not tenable, he said.

Mr. Kotwal referred to the Advocate-General's contention that the action of the Governor could not be consi-

dered as that of the Government and said that on the face of the Governor's order it appeared that it had been issued by the Governor, Mr. Kotwal said that he was, therefore, proceeding on the basis that the order had been issued by the Governor.

The Advocate-General had relied on Article 361 (1) of the Constitution and had argued that it barred the jurisdiction of the Court in respect of the action of the Governor. Mr. Kotwal said that the article provided that the Governor was not answerable to any Court for his action. The subject matter of the present proceedings was the legality of the obstruction in the execution of the High Court writ. Incidentally, the Court had to consider validity of the Governor's order.

VALIDITY OF ORDER

He Contended that it was not necessary that the Governor should be a party to the present proceedings. When the validity on an Act was challenged the legislature was not brought before the Court nor any remedy sought from it, even though the impugned Act was that of the legislature. Similarly when the act of a Governor was challenged, it was not essential that the Governor should be made a party.

The contention that Article 163 (2) barred the jurisdiction of the Court to consider the validity of the Governor's order could not be maintained, he said. In fact, that Article supported the contention that the Court had jurisdiction. Under that Article, the only ground on which the Governor's action not be challenged was the ground as to whether he advice or on his own. The Article suggested that on all other grounds the action could be challenged.

The Court asked Mr. Kotwal to concentrate his arguments on the provision of Article 161 under which the order had been issued by the Governor and the limitations. If any, it placed on the Court's powers.

The Full Bench consisted of the Chief Justice, Mr. H. K. Chainani, Mr. Justice, J. R. Mudholkar, Mr. Justice, S. T. Desai. Mr. Justice B. N. Gokhale and Mr. Justice K. T. Desai.

The Advocate-General, Mr. H. M. Seervai, said that there was no judicial proceedings before the Court in

which, the validity of the Governor's order could be gone into or determined. The two questions raised by the Chief Justice for determination were not explicitly set out in the notice served on the State. The determination really involved an adjudication between two parties, but there was no aggrieved party before the Court.

The function of the judiciary had ended with the passing of the sentence and that of the executive had begun, he said. The notice as it was served on the State by the Court was perfectly all right but without the implied questions which the Chief Justice had raised subsequently. The moment the implied questions were put expressly it became a judicial determination. There could be no judicial determination unless some one asked for it.

The Advocate-General said that the, capacity of the State as a Prosecutor had come to an end and he was not appearing for the State as a prosecutor but as one to assist the Court in its proceedings. The moment the implied questions—whether the Governor's order was valid and how the unexecuted writ of the High Court could be made effective—were made expressly it would be clear that what was wanted was not a mere explanation but a determination of the question which, he said, was not permissible.

He said it was nobody's contention that the Governor's order was invalid because Nanavati had not questioned the validity of the order. There was no cause of action and the Court had thus become functus officio. The Court had no jurisdiction to inquire into an executive action "It is not pleasant for me to make a submission of this kind which runs contrary to the views of the Court". It was his duty to point out that the Court had no jurisdiction. The statutory jurisdiction conferred on another could not be halted. The Court could not sit in judgement upon executive acts when it had no jurisdiction.

To the query by the Chief Justice what the Court should do if the Governor's order was found to be invalid, the Advocate-General said; "Your Lordships will be powerless to do it". If the orders of the Court were not carried out because of a supervening law the Court had no jurisdiction. The second point raised by the Chief Justice arose only after the first point had been determined.

Mr. Seervai said that he did not know whether the present one was a civil or criminal-original, appellate or revisional proceeding. The Court had not such type of criminal jurisdiction in the present case. If it was civil, what was the process and where were the parties, he asked. The only exception where the Court itself could take notice was in respect of contempt proceedings.

On being asked whether there were any precedents, Mr. Seervai said that there were some but records had to be searched. He pointed out that bifurcation work had kept everyone busy.

Mr. Seervai contended that there was sharp and clear distinction between the action of the Government and the Governor and the order in the present case could not be taken to be that of the State Government. He cited several provisions of the Constitution to show that the Governor did not mean Government. Article 163 (2) barred the jurisdiction of the Court on the question whether the Governor had acted on his own or on advice.

The Chief Justice drew the Advocate-General's attention to a case in which a naval rating had been convicted and sentenced in a murder case, but the sentence in that case had not been suspended by the executive action. Mr. Seervai said the essential basic thing for equality of treatment was whether the facts and circumstances of the cases were identical. It was the facts that called for executive discretion. The whole idea of remedying justice was that one set of circumstances might call for exercise of that power, but another might not.

Mr. Seervai said that he had not read the papers in the Nanavati case but it appeared that one of the Judges of the High Court held that medical evidence was rightly withheld from the jury while the other Judge held a different view. The jury, the Judges of facts, had held him not guilty while the trial Judge found him guilty of the lesser charge and recommended a nominal or token sentence.

The fact that the power under Article 161 had been sparingly used in appropriate cases was a matter for congratulation and not one to be regretted, he added.

The Chief Justice asked the Advocate-General to point out the circumstances in which persons were kept in naval custody and also the relevant Section in the navy Act. Mr. Seervai said that the relevant provisions were Section

83 (3) read with Section 89 (3) and the said provision gave the authorities power to detain a person subject to naval law in naval custody, "*who commits or is charged with offences*". The Act contained three phrases "*naval offences*", "*civil offences*" and "*offences*", but the word had not been defined.

The power of the Governor under Article 161 to suspend a sentence was unlimited and there was no question of fulfilling any condition precedent, he said. If at all there was any condition precedent, it was that there should be a sentence. The notice served in the present proceedings showed that there was a sentence and, therefore, even that condition had been fulfilled.

Mr. Rajni Patel, counsel for Nanavati, said that he adopted fully the elaborate and clear arguments of the Advocate-General. He said that Nanavati had accepted the condition laid down in the order of the Governor of continuing in naval custody and made no grievance about it.

NAVAL CUSTODY JUSTIFIED—"ADVOCATE-GENERAL"

The Advocate-General, Mr. H. M. Seervai, contended before the Full Bench of the Bombay High court that the Governor of Bombay had not imposed any illegal condition while suspending the life sentence passed on Commander K. M. Nanavati.

Replying to the arguments advanced by counsel for the Western India Advocates' Association and the Bombay Bar Association, Mr. Seervai said that Nanavati had accepted the condition of naval custody. The Governor's order only aimed at maintaining the *status quo*. Mr. Seervai also submitted that detention of Nanavati in naval custody was legal.

The most important issue involved at this stage was to consider the validity of Governor's order suspending the sentence, and the legal position, thus created.

Resuming his argument on the fifth day of the proceedings, Mr. Seervai submitted that the Governor had not imposed any illegal condition by his order. He said that consent of the accused to the condition imposed was

relevant. If a person was unlawfully imprisoned and against his will, he could complain against that. He had a right to do so and it had been recognised by law. The condition of naval custody, imposed by the order of the Governor, was in terms of the Navy Act. It was neither wrong nor unlawful, Mr. Seervai added.

Under Section 3(12) of the Navy Act, the Advocate-General pointed out, naval custody meant arrest or confinement of a person in the prescribed manner or in accordance with the usages of naval services and included military and air force custody. The order of the committal Presidency Magistrate in terms described the naval custody as naval jail and detention quarters. The Governor had in substance preserved the *status quo*. pending determination of the case on merits. The Governor had used the description as contained in the judicial order of the Magistrate permitting Nanavati to be kept in naval custody.

Naval Custody :

Mr. Seervai said that the naval usage was a question of fact and there was no evidence before the Court on the point. In deciding the validity of naval custody, the naval usage could not be excluded. On an inquiry from the Court what those usages were, Mr. Seervai said that he had no instructions on that point. The Navy was not before the Court. He was appearing for the State. To find out usages would involve considerable time.

Mr. Seervai said that the naval usages were a crucial factor to be considered in deciding the legality of naval custody, but there was no evidence before the Court. It would be wrong to say that naval custody was illegal unless it was shown that usage did not justify it.

The Advocate-General said that the argument of Mr. R. B. Kotwal, counsel for the W. I. Advocates' Association, suffered from infirmity in that he failed to distinguish a detention in custody which was not a punishment from a detention which was a punishment. The Navy Act itself contained sharp distinction between the two types of detention. The committal Magistrate neither intended nor had the power to inflict any punishment. The same had been in effect upheld by the trial Judge of the Sessions Court when he refused the application of the prosecution to cancel naval custody, and also by the Division Bench of the

High Court which heard the reference. Till the day of the Governor's order, Nanavati was not suffering any punishment. There could be no illegality in the detention when the person detained voluntarily submitted to it.

The trial had not come to an end if further proceedings were capable of being taken. The Governor's order was clear that it was only intended for the period pending the disposal of the intended appeal of the accused to the Supreme Court.

Mr. Kotwal had mixed up the two separate kinds of detention and had argued that the present detention of Nanavati in naval jail was a punishment. There was clear evidence before the court that Nanavati's detention was not a punishment. The Governor had only preserved the *status quo*, he added. If any inapt words were used, the court must look at what his intention was.

To a query put by Mr. K. T. Desai, whether the Governor would have the power to order detention, the Advocate-General replied that he was not sure. A fair way of looking at the order was that the Governor desired that the *status quo* should be maintained and he did that by imposing a condition that if Nanavati wanted to remain where he was, then, suspension would be granted. Nanavati accepted that and his counsel made a statement that he (Nanavati) would make no complaint against it. The Commander in charge of I. N. S. "Kunjali" also agreed to keep Nanavati there. There was nothing either in the Navy Act or in the usage of the Navy to the contrary unless it was proved.

The Advocate-General said that the Governor had not asked Nanavati to submit himself to detention as a punishment. The Act clearly mentioned about the powers to keep one in custody, to carry out investigations by "proper authorities" and to impose duties on responsible persons for the safe custody of an accused person. So long as naval custody could be according to the usages of the Navy and that custody was in fact accepted by voluntary submission, the Advocate-General said, the question of legality or illegality could never arise.

Mr. Seervai said that if an appeal was pending, the trial had not come to an end.

The Chief Justice asked Mr. Seervai to look at Section 307 of the Cr. P. C., Mr. Seervai said that the word "trial" had not only one meaning. The trial might have many

stages. If a higher court was seized of the matter, the trial had not ended. The trial had two meanings—quay the accused and quay the court.

Mr. Kotwal said that in this case the trial by the jury had come to an end. The question of an appeal was a different matter. The Advocate-General said that if the matter was before the Supreme Court by way of an appeal, the trial for the accused had not come to an end.

Mr. Justice K. T. Desai : Naval custody may be different from naval jail custody.

Advocate-General : The words used are naval detention quarters. Any place where a person is confined against his will is called a prison or a jail. It is so under the general law. The Act does not define prison.

Mr. Justice K. T. Desai pointed out that a prison was defined under the Prison Act.

Mr. Seervai : Prison and detention house are synonymous in terms.

Mr. Justice K. T. Desai : Supposing it is said that a man cannot leave the limits of Greater Bombay, you cannot say he is in a jail.

Mr. Seervai : Detention is detention in any place. It may be big or small.

The Advocate-General said that if serious allegations were to be made and if an inference of "false imprisonment" was to be drawn, there must be a proceeding in which the Navy should be a party. Bare justice required that specific charges should be made, supported by evidence, and an opportunity given to the parties concerned to meet them.

Mr. Justice K. T. Desai : If the order is made for a collateral purpose, it can be held unconstitutional.

Advocate-General : If it is for a collateral purpose, yes ; in this case, there is no question of a collateral purpose.

Mr. Seervai contended that there was nothing unlawful in the detention of Nanavati in naval custody according to the law of India.

Mr. Seervai said that the consent of the accused was not necessary where the sentence was remitted and the accused allowed to go. In the present case, the Governor's order did not merely remit the sentence. It was coupled with a condition. If there was power to give pardon absolutely, it included the lesser power to give a conditional pardon. What had been done was to see that the accused

did not run away till the Supreme Court gave its verdict on his guilt. He said that there was no design to see that under no circumstances Nanavati would have to go to jail.

On the point whether the accused could be produced before the court, he said that it could be done if the purpose of his presence was germane to the matter before the court. Apart from that aspect, he said, there were statutory provisions which left to the State question whether a witness should be produced or not. He said that this did not involve any disrespect to the court or any interference with the Judicial process. In this connection, he drew the attention of the court to Section 3 of the Prisoners Attendance in Courts Act and said that the State had power not to produce a person if his removal from the prison to the Court was likely to disturb public order. In such cases, powers for taking evidence on commission had been provided.

ARGUMENTS ON CUSTODY OF NANAVATI

The questions for determination by the Full Bench, as put by the Chief Justice at the opening of the proceedings, were (1) whether the Governor's order was valid or not, and (2) how the unexecuted writ and warrant for arrest issued by the High Court in the Nanavati case could be made effective.

The Full Bench was specially constituted on a Division Bench expressing the view that the "unusual situation" created by the return of the High Court's writ and warrant unserved following the Governor's order, should be considered by a larger Bench of the High Court.

Concluding his arguments, the Advocate-General, Mr. H. M. Seervai said that the unexecuted warrant of the High Court would remain suspended so long as the Governor's order suspending the sentence was effective. It was not necessary in law to cancel it and, therefore, no action was called for.

The Advocate-General quoted Sections 75 and 93 of the Cr. P. C. and said that a warrant for arrest remanded in force till it was executed or until it was cancelled by the judicial authority. "In our submission, what has happened is that by an order lawfully promulgated, the sentence

is suspended. If it is so ; its consequence—the execution of the warrant *pro tempore* must also be suspended”.

Mr. Seervai said that under the general law, even though the warrant was in force till it was executed, it must remain suspended so long as the Governor's order suspending the sentence was effective *“No action is called for if you come to the Conclusion that the order has been lawful and the sentence has been lawfully suspended”*.

He assured the court on behalf of the State that the High Court would be kept informed of the position that obtained in respect of this suspension of sentence. *“If for instance, we come to know that Nanavati has left the custody, we will inform the court that he has broken the consent and, therefore, the suspension became ineffective and the warrant can be executed. If the intended appeal is dismissed by the Supreme Court, we will inform the Court that the condition on which the warrant was not to be executed has come to an end. Then the warrant becomes operative automatically. The State undertakes to inform the court of the observance or non-observance of the condition which it can reasonably know.”*

If the High Court decided to cancel the warrant, Mr. Seervai pointed out, *“there may be complications as to whether a further warrant can be issued. It is not necessary in law to do so”*.

Mr. Seervai, who replied to the arguments advanced by counsel for the Western India Advocates' Association and the Bombay Bar Association, said that if the Court was satisfied that by the Governor's order nothing had been done to defeat the ends of justice, the Court should not go into technicalities but construe it so as not to defeat its purpose but to effectuate it.

His contention that the consent of Nanavati to the condition of Nanavati continuing in naval custody was relevant for deciding its validity found support in Section 401, Cr. P. C. The section which gave a similar power the Government laid emphasis not on the power to impose the condition but on whether the person was willing to accept the condition.

It was a well-settled principle of construction that if two constructions were fairly possible, the one validating the document should be preferred to the one destroying it. Once the Power to pass the order was granted, the Court should not strictly construe the language by going into

its technicalities. If, in substance, the order was in furtherance of justice, it should be given a liberal construction.

Mr. Seervai argued that the words in the Governor's order in regard to custody should be given the interpretation "*custody pending trial*". It was neither a punishment nor had it set him free. "Custody pending trial" would be a reasonable interpretation under the Navy Act. It was in furtherance of the ends of justice.

Governor's Order

The Advocate-General said that the Governor had before him the fact that an appeal was going to be filed on behalf of Nanavati. But, Nanavati could not appeal until a copy of the judgement was ready. The moment the Supreme Court rejected the special leave application, the order would come to an end.

The order of the Governor, issued under Article 161, was limited in point of time till the disposal of an appeal intended to be filed and subject meanwhile to a condition, Mr. Seervai said that the condition could not be read as an order. If Nanavati did not accept the condition, the Governor had no power to keep him there by force.

Mr. Seervai said that the State Legislature had powers to enact, with the permission of the President, a "*local amendment*" to the Criminal Procedure Code legalising the detention of a naval officer in naval custody.

Mr. A. A. Peerbhoy, counsel for the Bombay Bar Association, who argued with the permission of the Court, said that the various American and English Courts' decisions cited by Mr. Seervai in support of his contentions would have no application at all.

Mr. R. B. Kotwal, counsel for the Western India Advocates' Association, who also sought permission to address the Court, invited the attention of the Court to Section 155 of the Navy Act. He said the Act clearly defined naval custody before punishment and naval jail custody after punishment.

The Full Bench of the Bombay High Court, which sat in the Chief Justice's court to consider the Governor's order in the Nanavati case, moved in the afternoon to the bigger central court room to accommodate a larger number of people.

The venue was changed after the recess, because large crowds which thronged the High Court were disappointed at their failure to get admission owing to lack of space in the Chief Justice's court room.

During the morning, the proceedings, conducted in the court of the Chief Justice, were interrupted several times by unruly crowds which had collected in the precincts of the High Court.

The Crowds began jamming the court and its vicinity from early morning hoping for a glimpse of Commander Nanavati, Nanavati however was not brought to the court. He was represented by counsel. By the time the court sat at 11 a.m. the police arrangements to control the crowd virtually broke down.

Scores of policemen using batons managed to clear the balcony in the court room, plasters from the supporting structure of which gave way at place under the pressure of the mass of people jamming the balcony.

As group after group of people pressed into the court, there was pandemonium in the corridors. The crowds shouted and enagaged in altercations with court officials and policemen who tried to stop them rushing into the court room.

As the crowd pressed forward and banged the door, the glass panels of several of them were shattered. The babel of angry voices and the noise created by the crowds by banging on the wood-work rendered the Chief Justice almost inaudible to the packed court room.

As the din grew louder, the Chief Justice's voice was drowned. The court proceedings were again interrupted several times. At one point, the Advocate-General remarked that it would have been better if the hearing was held in a large room like the Old Sessions Court chamber but the present room had been changed because it was the Chief Justice's Court.

By noon, huge crowds still packed the court precincts, but they were more subdued. The court could continue consideration of the case without undue disturbances.

However, nothing the desire of the people to watch the proceedings, the Chief Justice decided to shift the venue in the afternoon. The new room being very much larger, it could accommodate several times the number present in the Chief Justice's Court.

There was a scramble for vantage positions in the

central court room and by the time the Full Bench had reassembled after the recess, all the balconies were crowded with people, while the ground floor was crowded with lawyers.

BOMBAY BAR ASSOCIATION'S RESOLUTION

Members of the Bombay Bar Association at the meeting passed a "special" resolution expressing the "strongest disapproval" of the exercise by the Governor of Bombay of his powers under Article 161 of the Constitution of India with regard to the case of Commander Nanavati.

The resolution stated that the Association was fully aware that it should "refrain from expressing any opinion or views on the legality or otherwise of the order of the Governor", the matter being sub judice.

The Governor's order had shocked the conscience of the people and justifiably raised an apprehension in the minds of the citizens that there was not one rule of law for all citizens alike, the resolution said.

The Governor should not have exercised his powers so as to set at naught the writ of the highest judicial authority of the State before the completion of the entire judicial process, it stated.

The resolution added that the Governor's "intervention" had shaken the faith of the people that the rule of law would at all times prevail and that the sanctity of judicial decision and order would not be set at naught "at the sweet will of the Executive for any reason, however trivial".

The resolution said that "the Governor's powers under Article 161 of the Constitution, in so far as they related to the suspension of the sentence on Commander Nanavati, should not have been exercised until after the whole process of law was exhausted. Article 161 should be invoked only as a last resort to avoid a grave miscarriage of justice, it said. The powers under Article 161 should not be exercised before the whole process of law was exhausted except for reasons as grave as a threat to public security or peace, the resolution concluded.

Advocates in Bombay presented a petition to the President of India through the Governor of Bombay protesting against the "most arbitrary" use of powers under

Article 161 by the Governor. The advocates in their petition said that this use would prove to be "most dangerous" precedent.

B. B. A. COUNSEL'S ARGUMENTS

Counsel for the Bombay Bar Association and the Western India Advocates' Association contended before the Full Bench of the Bombay High Court that the Governor had no power to suspend life sentence passed on Commander K. M. Nanavati with a condition and, therefore, the order was bad in law.

Mr. R. B. Kotwal, counsel for the Advocates' Association, said that the power under Article 161 had been misused. The order of the Governor might not be mala fide in fact, but was mala fide in law, he added.

Mr. A. A. Peerbhoy, counsel for the Bombay Bar Association said that the very nature, subject-matter and wording of the Governor's order clearly showed that it was beyond the scope of Article 161.

The power of the Governor under Act 161 of the constitution was one of the most disputed points before the court, and was well argued for and against the rest part of the proceeding of this trial was based on this point.

Mr. H. M. Seervai, Advocate-General of Bombay, who was replying to the various points raised by Mr. Kotwal and Mr. Peerbhoy, had not concluded his arguments on that day.

When the Court met Mr. A. A. Peerbhoy made an application to appear with Mr. Daniel Latifi on behalf of the Bombay Bar Association, in assisting the court to come to the conclusion on the questions before it. He said that they had been authorised by the Association to put in their appearance in the present proceedings. He assured the court that he would deal with only those points that had not been dealt with by the Advocate-General and Mr. Kotwal. His application was granted and they were allowed to appear in the proceedings.

The Full Bench rejected a request made by Mr. Achyut G. Bhide, an advocate of Poona, that an application made by him questioning the validity of the Governor's decree in the Nanavati case be heard along with the present

proceedings. He said that the State was contending that there was no proper proceedings before the court and this application would rule out any possibility of such technical grounds being taken.

The Advocate-General, Mr. Seervai, said that the application had been posted for hearing for admission before the Division Bench dealing with constitutional matters. He opposed the application being heard along with the present proceedings and said that it should allowed to be dealt with by that Division Bench.

Mr. Seervai also pointed out that the applicant had made discrimination as one of the grounds, but he had not been discriminated against, Mr. Bhide submitted that his application was closely related to the question now being considered by the Full Bench.

The Chief Justice, Mr. H. K. Chainani, remarked that they did not want to extend the scope of the present inquiry and added : "*Let it be placed before the Regular Bench*". The Full Bench also rejected his request to appear to assist in the present proceedings. The Chief Justice said : "*You may assist others*".

FIVE GROUNDS

Resuming his arguments before the Full Bench, Mr. R. B. Kotwal said that the validity of the Governor's order could be challenged on five grounds namely, if it was shown that : (1) he had no power to pass such an order (2) he exceeded the power given him ; (3) he had not followed the procedure laid down ; (4) he exceeded the limitations placed on his power ; and (5) the power had been misused or abused in the sense it had been used for a purpose for which it was not intended.

Mr. Kotwal contended that the present order of the Governor "*suffered from all the five vices*".

He said that the effect of the Governor's decree was that the sentence passed by the High Court had been commuted to naval detention in naval jail. The Governor had done that "*illegality*" as an officer of the navy, which Nanavati was, could not be given that punishment. The Governor had no power to pass an order which by its nature, was a conditional order of suspension depending upon Nanavati's continuing in naval jail custody.

Mr. Kotwal argued that under the Navy Act, detention had been prescribed as a form of punishment and therefore when the Governor suspended the imprisonment he really commuted the sentence and prescribed a lesser punishment provided for in the Navy Act. It was not suspension pure and simple but substitution of one punishment for the other, namely, detention under the Navy Act. He argued that under no law could the Governor order a naval officer to be put in naval custody. The second part of the Governor's order which related to the naval custody of Nanavati was therefore illegal, he added.

Mr. Kotwal remarked that even though the Governor's order fell into two parts consisting suspension and custody, it was one transaction and both the parts were, integral parts of the same order. If one part of the order was illegal, then, the whole order must go.

Section 85 of the Navy Act provided that the only authorities who could order a person to be detained in naval custody were the naval authorities. "Navy" was the Central subject and therefore the State Government or the State Governor had now power to order that anybody should be detained in naval custody. The Governor had thus exceeded his jurisdiction in ordering Nanavati to be detained in naval custody.

Even assuming that the two parts of the order were independent of each other and could stand separately, Mr. Kotwal contended that it should be held that the portion relating to custody was invalid. The Governor had exercised his powers under Article 161 to suspend the sentence but that Article did not vest in him any power relating to custody. Even then, the Governor did not pass an unconditional order to suspend the sentence but had made the "relief" conditional by enabling Nanavati to continue in naval custody.

If it was found that the custody part of the order was invalid, it should be seen how it would react on the first part of the order regarding suspension.

He then pointed out that when the High Court issued a writ on March 11, 1960, followed by a warrant for the jail custody of Nanavati, that warrant automatically withdrew the lower court's order regarding the naval detention. That was the effect of the High Court order.

After the High Court's verdict, Mr. Kotwal contended a fresh order would be required to continue Nanavati in

naval custody and it was not open to the Naval authorities to detain him.

Whether it was civil custody or naval custody, it could be so ordered only by the process of law. The Governor's order being an order suspending the sentence and setting aside the custody, was not enforceable. If therefore, it was not enforceable and also because it was a conditional order, the order itself would be vitiated. There was no legal authority either for the Governor or the Navy to detain him.

Mr. Kotwal said the power of pardon of which the power of suspension was a part had been given to the executive to mitigate the rigour of law. Therefore, it could be exercised only when the whole judicial process had been completed or when the accused pleaded guilty. The effect of the Governor's order in this case was to set aside the writ issued by the High Court and to continue Nanavati in naval custody by the High Court Writ.

Mr. Kotwal said that the Governor's order was also in conflict with certain rules of the Supreme Court. One of them provided that unless an accused had surrendered the special leave for appeal could not be posted for hearing unless the Supreme Court thought it otherwise. The effect of the order was that Nanavati could make an application for special leave but because he had been prevented from going to jail in view of the Governor's order, the application would not be posted for hearing. "It was really intended for this purpose and the Governor issued an order contrary to the rules".

OBJECTION

The Advocate-General, Mr. Seervai took strong objection to Mr. Kotwal's remarks and said that it was not the function of *amicus curiae* to attribute motives and say that the order was malafide. What was it that Mr. Kotwal wanted to allege against the Government ?

Mr. Kotwal said : "When your Lordships consider the whole circumstance in which the order is passed, then the purpose for which the order is passed is apparent". It might not be a mala fide in fact, but it was mala fide in law. The ordinary law (Cr.P.C.) contained a provision, Section 401, under which the purpose of suspending the Sentence could have been well achieved. Then, it was necessary

for Nanavati to submit and be put in jail. Nanavati was in naval custody but not in jail.

If he wanted to get relief under Section 401 Cr.P.C. it was necessary for him to go to jail. The "extraordinary power" under Article 161 was exercised by the Governor only to prevent him (Nanavati) from going to jail.

Mr. Kotwal said it was not his intention to make allegations against the Government or the Governor. But the power had been misused and there was something mala fide in law.

Mr. Peerbhoy said that he had no mandate to support one or the other side, but would make his submission looking at the order dispassionately.

EQUALITY BEFORE LAW

He said that the cardinal principle underlining the Constitution was equality before law. If certain powers had been given to the Governors, they must be strictly construed without reading anything into those Articles and the present order should be held valid only if it strictly fell within the provisions of Article 161. The Article did not say that the Governor could make a conditional suspension of the sentence.

Mr. Peerbhoy said that he had nothing more to add to what Mr. Kotwal had submitted on the point of the court's jurisdiction to consider the validity of the order.

Even if the Governor could not be brought before the court, his order could scrutinised by the court to determine whether it fell within the provisions of Article 161 or not.

Discussing the powers conferred on the President of India under Article 72 and on the Governors under Article 161, Mr. Peerbhoy argued that being a conditional order, it was bad in law. Even if he had powers to make a conditional order, the navy was not subordinate to the Governor, but only to the President. The Governor could not order a naval officer in charge of the naval jail to take him into custody. The Commander of the naval jail had not been ordered by a rightful authority, it was not, therefore, a legal order. A part of the order could not be served. Either the order stood valid or it fell.

Mr. Peerbhoy pointed out that if Nanavati did not carry out his intention to appeal to the Supreme Court,

the Governor would have to pass another order to cancel the present decree. The court pointed out that under the General Clauses Act, when he had powers to issue an order, he had also powers to cancel the same. And the General Clauses Act had been made applicable by Article 367.

Mr. Peerbhoy submitted that Article 161 envisaged passing of an order at the end of the judicial process. If Division Bench that heard Nanavati's application for leave wanted, Nanavati to be brought before the court, it would not have power to do so, as, under the Governor's order, Nanavati could not leave naval custody even for coming to the High Court. I. N. S. Kunjali, the naval jail, was as much out of the Governor's jurisdiction as London was, he said. The very nature subject matter and the wording of the order showed that the order was beyond the scope of Article 161.

If there was any conflict, Mr. Peerbhoy argued, any interpretation must be in favour of the judiciary and not in favour of the State, because the rule of law must prevail.

Even according to the Navy Act, he said that the present offence was triable by a Civil Court and was outside the jurisdiction of the Navy Act. The Governor's order had "cut short the course of law" he added. When the committal Magistrate permitted Nanavati to be kept in naval custody, no definite decision had been taken on his guilt.

That also applied to the order passed by the Trial Judge of the Sessions Court. But the continuance of naval custody after his conviction was on different footing. Counsel said that the Cr. P. C. mentioned only three kinds of custody ; police, jail and judicial. The Magistrate could not allow the accused to be kept in any custody which the Magistrate thought fit, but only in one of the three kinds of custody.

Mr. H. M. Seervai, Advocate-General, said that the Presidency Magistrate of the committal court had invoked the powers under Section 3 of the Prisoners Act while ordering that Nanavati be kept in naval custody. He said that the naval authorities sought custody of Nanavati relying on Section 89 (2) and (3) of the Navy Act. He cited section 167 and 344 of Cr. P. C. to show that the Magistrate had powers to decide the nature of the custody "*as he thinks fit*".

Replying to the arguments of Mr. Kotwal and Mr. Peerbhoy, Mr. Seervai said that amicus curide could not contend that the detention was illegal. He was in no higher position than a party to the proceedings. In face of the statement made by counsel for Nanavati that he accepted naval custody and made no complaint about it, would a prayer for a habeas corpus writ lie, he asked. On being told by one of the Judges that it was applicable to habeas corpus application, Mr. Seervai said any challenging of the validity of detention was of a similar nature. The powers of the court had to be invoked by appropriate proceedings.

When contentions were made on equality before law, Mr. Seervai said, it must be shown that a person situated similarly had been treated differently. If discrimination was in favour of a person, he could not challenge the order. The only restriction on the power of the Governor was in respect of the death sentence. The Article gave Governor full power to commute, suspend and respite a sentence.

HIGH COURTS' JUDGEMENT

The Chief Justice, Mr. H. K. Chainani who presided over the five-member Full Bench, delivering the judgement, said that such an order was likely to create an impression that it had been made in order to accord special treatment to a particular person and as such "is likely to impair the confidence of the public in the impartial administration of justice."

While upholding the validity of the decree of the Governor suspending the life sentence passed on Commander K. M. Nanavati, a Full Bench of the Bombay High Court expressed "profound regret" at the use of the extraordinary powers of the Governor in this case.

He said that the very amplitude of the powers of the Governor made it necessary that they should be used sparingly and with considerable restraint.

In giving the 50-page Judgement, the Chief Justice said : *"we are of the opinion that the order of the Governor has not been shown as unconstitutional or contrary to law"*.

"We direct that unless the order made by the Governor is cancelled or withdrawn before decision of the Supreme Court, the warrant should not be re-issued until the appeal

to be filed by the accused in the Supreme Court has been disposed of", the Chief Justice said.

The Chief Justice said that three members of the Full Bench, Mr. Justice, J. R. Mudholkar, Mr. Justice S. T. Desai and Mr. Justice B. N. Gokhale, were of the opinion that confinement of the accused in a naval jail could not be said to be wrongful or illegal.

The Chief Justice and Mr. Justice S. T. Desai were, however, inclined to hold that the condition was without any authority of law. The condition forming an integral part of the Governor's order, both the condition and the order were invalid.

"In view, however, of the high regard which we have for the legal knowledge and judgement of our three brothers and in view also of the well settled rule that where two views are possible, the presumption in favour of the validity of the order must prevail, we have decided not to dissent from the view taken by the majority of us. Accordingly we hold that the condition contained in the order of the Governor has not been shown to be invalid".

In the result, the decision of the Full Bench was unanimous.

Expressing profound regret at the use of the extraordinary powers, the Chief Justice said: "We consider it necessary to add that wide and unfettered as the powers referred to in Article 161 are, they cannot be exercised arbitrarily and except for good and sufficient reasons. The very amplitude of these powers makes it necessary that they should be used sparingly and with considerable restraint.

"They must be used only for the purpose for which they have been conferred and that is to promote justice and not to circumvent the due processes of law. Ordinarily, they should not be exercised, when judicial proceedings are pending. They should also not be used so as to short-circuit legal processes and give relief which could be granted by a court. We hope that those, on whom the Constitution has conferred these extraordinary powers, will exercise them with wisdom and so as not to interfere with the due administration of justice."

In this case, "the reasons for the order have not been disclosed to us. We can only look at the matter with judicial eyes and we are not entitled to take notice of what has appeared in the newspapers in regard to it. It

is, however, clear that the order was issued when the Court was seized of the matter. The Advocate-General, stated in the course of his arguments that this Court could not have granted bail to the accused, after it had found him (Nanavati) guilty of the offence of murder and that consequently, the accused had to seek the intervention of the executive for the suspension of his sentence, pending the decision of the Supreme Court".

"Assuming, however, that this court could not have granted bail, it might have been in a position to direct, on sufficient cause being shown, that the warrant for the arrest of the accused should be issued or executed after an interval of some days, during which the accused could apply for leave to the Supreme Court. No application for such relief was, however, made to this Court. No application for bail was also made to the Supreme Court. The order also suspends the sentence not only until the application for leave to the Supreme Court has been decided, but until the appeal to the Supreme Court has been disposed of.

"Several cases have come before this court, in which persons, who had been tried on the charge of murder and had been acquitted by the trial court, have been convicted by this Court and sentenced to imprisonment for life. In none of these cases was the sentence suspended pending the decision of the Supreme Court.

"The order in this case is", the Chief Justice said "as observed by Mr. Justice Shelat and Mr. Justice Naik, unusual and unprecedented. Such an order is likely to create an impression that it has been made in order to accord special treatment to a particular person and as such is likely to impair the confidence of the public in the impartial administration of justice. We must, therefore, express our profound regret at the use of the extraordinary powers in this case, the result of which has been that the writ issued by this Court, in the exercise of its normal jurisdiction, has become infructuous, not on account of an order of a superior court but on account of a directive issued by the executive".

The special Full Bench was constituted after the Division Bench of the High Court, consisting of Mr. Justice Shelat and Mr. Justice Naik had expressed the view that the return of the unexecuted writ and warrant issued by the High Court in the Nanavati case had created an unusual

and unprecedented situation and that the matter should be placed before a larger Bench. The writ and the warrant were issued after Nanavati was convicted and sentenced to life imprisonment on the charge of murdering Prem B. Ahuja on April, 27, 1959 on the case being referred to the High Court by the trial Judge of the Sessions Court. The writ of the High Court could not be served as the Governor had issued an order suspending the sentence.

The Full Bench, heard arguments of the Advocate-General and Counsel on behalf of the Western India Advocates' Association and the Bombay Bar Association for seven days, on the validity of the Governor's order. At the opening of the proceedings, the Chief Justice said that the questions for determination were (1) whether the order issued by the Governor was legal and constitutional ; and (2) if not, how the writ issued by this court could be made effective.

Delivering Judgement, the Chief Justice said that the principal question which the Court had to decide was whether there was a proper return to the writ issued by this Court, i.e., whether the warrant for the arrest of the accused had not been executed for good and valid reasons. For this purpose it was necessary to decide whether the action taken by the Governor was within law.

The Advocate-General, raised a preliminary objection that the court had no jurisdiction to examine the validity of the action taken by the Governor, because there were no judicial proceedings pending. He had also contended that there were no parties, between whom any question had arisen which could be judicially decided by the Court. According to him, the Court had become functus officio, as soon as it had pronounced judgement in the case.

Mr. R. B. Kotwal, Counsel for the Western India advocates' Association, on the other hand, contended that the Governor's order had come in the way of the execution of the warrant issued in pursuance of a decision of this Court and the question before the Court was whether the obstruction was lawful or not.

The Chief Justice said the Court was inclined to accept the arguments of Mr. Kotwal. If a writ issued by the Court was returned unexecuted, the Court was entitled to inquire as to why it was not executed. The execution of an order made by a Court might be an executive function. But if an obstruction was caused in its execution, the

question whether I was lawful or not could only be determined judicially.

"In this proceeding we have to consider and decide whether the reasons given for not carrying out the order of this Court, are good and valid. For this purpose, it is necessary to examine the validity of the action taken. We hold that we have jurisdiction to determine this question".

The Advocate-General's contention was that the Governor's action could not be challenged in the present proceedings because the Governor was not represented before the Court and also because under Article 361, the Governor was not answerable to any Court for the exercise of his powers.

The Chief Justice said that Article 361 gave "personal protection" to the Governor. No proceeding was, however, being held against the Governor. He was not being asked to answer for anything done by him. It was also not proposed to quash or set aside his order. The legality of his order had to be examined only in order to determine whether there was a valid return to the writ issued by the Court. If the Court had come to the conclusion that the Governor's order was invalid, the Court would have issued a writ to the officer now holding the accused in custody to hand him over. No writ or order would have been issued to the Governor.

Consequently, it was not necessary that the Governor should be a party to the proceeding in order to enable the Court to decide whether there were good and sufficient reasons for not complying with the orders of this Court, the Chief Justice said.

The Chief Justice said that the Article 161 conferred discretionary powers on the Governor. The order in the present case was signed and the application made by the accused for leave to appeal to the Supreme Court was pending before this Court. No application had been made to this Court for releasing the accused on bail or for his being detained in naval custody pending appeal to the Supreme Court.

The order suspended the sentence not for a few days but until the appeal, if any, filed in the Supreme Court was disposed of. This, in the nature of things, must take a considerable time. The order did not appear to have been drafted carefully. The order referred to Sessions Case No. 22 for Fourth Sessions of 1959. The proceedings in the

Sessions case terminated when a reference under Section 307 Cr. P. C. was made to the High Court. The sentence was, therefore, passed not in the Sessions case but in the Reference No. 150 of 1959 before the High Court.

On the enquiry made by the Court the Advocate-General said that he had been instructed not to disclose the reasons which led the Governor to make the order. He had also said that a statement would be made in the Legislature after the Court had disposed the matter.

Mr. Chainani, said that the necessity of vesting the power of mercy, pardon and reprieve in some authority other than the judiciary had always been recognised. A judge could not take cognizance of facts and circumstances not brought to his notice judicially. Experience had shown that the minimum sentence prescribed under law for certain offences were sometimes unduly severe and the Judge could not reduce or remit them. Power must also exist to avoid grave miscarriage of justice or possible errors in judicial determination. The wisdom of investing the head of the State with the power of pardon and mercy could not, therefore, be doubted. It was a power essentially in aid of justice to be exercised as an act of grace and humanity in order to do justice.

The Chief Justice dealt at length with the English and American systems of law and also the provisions of the Indian Constitution in this respect. He said having regard to the language used in Article 72 and 161 of the Indian Constitution. It seemed to the Court that the framers of the Constitution intended to confer on the President and the Governors in their respective spheres the same powers of pardon, reprieve and clemency, both in its nature and effect, as was possessed by the Sovereign in Great Britain and by the President in the U.S. In India also, the power of pardon could, therefore, be exercised, before during or after trial.

The validity of the order of the Governor was challenged by Mr. Kotwal and Mr. A. A. Peerbhoy on the ground that it was made when the application for leave to appeal to the Supreme Court was pending before the Court and when the processes of law were not complete.

The Chief Justice said that "if pardon can be granted during the pendency of a judicial proceeding, it is not possible to hold that the other allied but lesser powers of reprieve, suspension of sentence etc. cannot be so exercised. The

powers conferred by Article 161 are also such that any order made in exercise of those powers must necessarily affect or alter the effect of the judgement of a court. If a person is pardoned after he had been found guilty and convicted by a court, its effect will be to clear the person from all the consequences of the offence for which it is granted.

"Notwithstanding the decision of a court finding him (the accused) guilty of the offence, he will be deemed not to have committed the offence if it is pardoned. Similarly, the effect of remission of a sentence is that in spite of the decision of the court imposing a sentence, the accused will not be required to undergo any sentence. Any order issued under Article 161 must, therefore, to some extent conflict with the decision of a court.

"Consequently, an order made under Article 161 cannot be held to be illegal, merely because there is a conflict between it and the order made by a court. The Article, covering as it does not field of mercy and pardon should be liberally construed".

Mr. Chainani said that "much as though we may not like the Governor's acting in this case immediately after this court had delivered its judgement and when the application for leave to appeal to the Supreme Court was pending in this Court, we cannot hold the order of the Governor to be illegal on that ground"

Another contention raised was that the Governor could not impose any condition, if he suspended a sentence. Section 401 specifically empowered the Government to suspend a sentence without conditions or upon any conditions. The absence of similar words from Article 161 was emphasised in support of the argument that conditional order of suspension could not be made under Article 161. "In our opinion, there is no force in this argument". The power to suspend a sentence would include the power to attach lawful conditions to it.

If a pardon could be made conditional, a sentence could also be suspended on conditions. The condition should, however, not be illegal, immoral or impossible of performance. The Chief Justice referred to the condition imposed by the Governor in his order that the accused should be detained in naval jail custody and said that the words "shall be detained" in the order of the Governor no doubt suggested that it was a direction by the Governor.

"We must, however, assume that the Governor was aware of the constitutional limitations on his power and that he knew that he could not issue any order to the Navy in this matter. Reading the order as a whole, it appears that what the Governor intended was that the sentence should be suspended so long as the accused remained in naval jail custody". The word "shall" was not in the context used as a word of "command". It had to be read in the context of the preceding words "subject meanwhile to the condition".

"Consequently, we cannot say that the Governor has issued any order directing any naval authority to keep the accused in a naval jail", the Chief Justice said.

Another ground on which the validity of the condition in the Governor's order was challenged was that a punishment of detention could not be awarded to a commissioned officer like the accused. The Chief Justice said that it was clear from the order of the Governor that the word detained as used in the order meant "kept in custody". As the Governor had suspended the sentence, it could not have been his intention to inflict the punishment of detention on the accused.

The third ground on which the order had been challenged was that the detention of the accused in naval jail custody after conviction was illegal. The Advocate-General in reply to the contention said that naval custody included custody in accordance with the usages of the naval services. The Chief Justice said that the usages referred to in the Navy Act were usages in regard to the mode and manner of arrest and confinement and not usages under which or confinement.

The contention of the Advocate-General, was that a trial did not end until the matter was finally disposed of by the highest court. The Chief Justice said that the word "trial" was well understood in criminal law and it ended when the proceedings in the trial court came to an end. Examining the use of the word "trial" in the Navy Act, the Chief Justice said that the word had been used in that Act also in the same sense in which it was ordinarily understood in criminal law. The trial in the present case ended when the Sessions Judge made a reference to this Court or at least when the High Court delivered its judgement on the reference made to it. The accused could not, therefore, be detained in a naval jail under Section 89 (3) of the Navy

Act. There was also no other provision in the Navy Act, which authorised his detention in a naval jail after he had been convicted.

The question, therefore, arose whether the detention of the accused in the naval jail was illegal. The Chief Justice said that no provision in the Navy Act had been pointed out to the court nor had the court been able to find any, which forbode such detention.

The counsel for the accused had told the court that the accused had accepted the condition mentioned in the Governor's order. He was, therefore, being detained in the naval jail with his consent.

The Chief Justice said that the order of the Governor did not contain any directive or mandate to the naval authorities but attached a condition to the order of suspension passed in favour of the accused and imposed a condition on the accused. The condition was that the order of suspension notwithstanding the accused was not to be at large, but should remain in custody till the disposal of the appeal by the Supreme Court.

In the opinion of Mr. Justice Mudholkar, Mr. Justice S. T. Desai and Mr. Justice Gokhale, the pith and substance of the condition was that the accused should remain in custody and not the mode or manner of that custody. In their opinion priority of consideration should not be given to the actual mode or manner in which the condition was to be fulfilled. That was a matter apart and must not be treated as the very essence of the condition of the whole order.

They, therefore, felt that the Governor's order could not be said to be unconstitutional or invalid on the ground that it contemplated detention of the accused in naval jail. They were of the opinion that an order made by an authority, entrusted with wide powers under the Constitution could not be struck down as invalid, because it contained a condition, the fulfilment of which might make some-one do an act, not expressly authorised by law.

The Chief Justice and Mr. Justice K. T. Desai were, however, inclined to hold that an essential part of the condition in the Governor's order was that the accused "shall remain in naval jail pending the decision of the Supreme Court". As this could only be complied with by keeping the accused in naval jail without any authority of law, the

condition and, consequently, the order of the Governor, were both invalid.

"In view, however, of the high regard, which we have for the legal knowledge and judgement of our three brothers and in view also of the well settled rule that where two views are possible, the presumption in favour of the validity of the order must prevail, we have decided not to dissent from the view taken by the majority of us. Accordingly, we hold that the condition contained in the order of the Governor has not been shown to be invalid", Mr Chainani said.

The Chief Justice referred to the arguments of Mr. Peerbhoy, and said that the power of the Governor under Article 161 in respect of offences under the Indian Penal Code was not taken away by Article 72 (which gave similar powers to the President) except perhaps the power to grant a pardon, when a sentence of death had been based.

The argument of Mr. Kotwal that the Governor's order only changed the nature of custody for which Article 161 was not intended to be used, could not be accepted, the Chief Justice said, because, the legal effect of the order made by the Governor was that the sentence passed upon the accused had been suspended. Consequently, it could not be said that the order made only a change in the custody.

It had been urged that Article 161 was used in the present case and not Section 401 Cr. P. C. in order that the accused should not surrender to his sentence and go to jail and the order was, therefore, mala fide, as the powers of the Article had been used for a purpose not intended for. The Chief Justice said that in the present case the reasons for which the order had been made had not been disclosed to the court. In the absence of any evidence on that point the Court could not hold that the order was made mala fide. For the same reason, the court could not say that there had been any contravention of Article 14.

It was suggested that the accused might never file an appeal and consequently the suspension of the sentence might remain in force for an indefinite period. The Chief Justice said : "We have no doubt that in such a contingency the Governor will take steps to cancel or withdraw his order". The Chief Justice said that the sentence

had been suspended on condition that the accused shall be detained in naval jail custody. The accused had not, therefore, been released from custody. Consequently, it could not be said that the order made by the Governor was an order of bail, the Chief Justice added.

Referring to the arguments whether the order made by the Governor could be regarded as an order of the Government, the Chief Justice said : "In the view which we take that the validity of the order could be examined by us, it is not necessary for us to express any opinion on this question".

"We are accordingly of the opinion that the order made by the Governor has not been shown to be unconstitutional or contrary to law", the Chief Justice said.

HEARING BEFORE THE SUPREME COURT

"Until the appeal intended to be filed by him in the Supreme Court against his convictions and sentence is disposed of, and subject, meanwhile, to the conditions that he shall be detained in the Naval Jail custody in I. N.S. Kunjali, the High Court sentence stands suspended", was the order of the Governor of Bombay (now Maharashtra) which created an unprecedented and un-usual legal situation before the High Court, as it was the first time in the History of Indian Constitution when a sentence of High Court was suspended by the Governor (under Article 161).

When the Court of Bombay (Maharashtra) rejected Nanavati's application for the leave to appeal to the Supreme Court after deciding the validity of Governor's order in affirmative, the accused filed a petition to the Supreme Court for special leave to appeal, this matter came before a bench of Supreme Court presided over by Mr. Justice, Gajendragadkar on April 25, 1960, the same constitutional controversy arose again on the relevant rule (Rule 5 of Order XXI of the Supreme Court rules) which reads".

"Where the petitioner has been sentenced to a terms of imprisonment, the petitioner shall state that the petitioner has surrendered and unless the Court otherwise orders, the petition shall not be posted for hearing until the petitioner has surrendered to his sentence", requires the surrender to the sentence which was suspended by the Governor.

The matter was referred to the Constitutional Bench of the Supreme Court consisting of the Chief Justice, Mr. B.P. Sinha, Justice, J. K. Kapur, P. B. Gajendragadkar, K. Subbarao and K. N. Wemchoo to decide whether the Governors' orders comes into conflict with the rule of the Supreme Court, that a petitioner before it should first surrender to its custody, to be heard.

On Monday, July 18, 1960, after an interval of 11 weeks, earlier than the usual hours fixed for the opening of the Supreme Court, the Chief Justice's court began to be filled

with its fullest capacity and by about 10-30 A. M., it was over-crowded with eager listener, busy lawyers and anxious Journalists, some officers of defence services.

Mr. J. B. Dadachanji, who appeared on behalf of petitioner, (Commander Nanavati) submitted that the special leave to appeal be granted, without Commander Nanavati's surrendering to his sentence.

Chief Justice : If Nanavati wishes to invoke the jurisdiction of the Supreme Court, he should have the Governor's orders cancelled.

Counsel : There is no need to get the order cancelled as it does not conflict with the rules of the Supreme Court.

Justice Gajendragadkar : It was the contention of Mr. A.S.R. Chari (counsel for Nanavati before the Division Bench) that the petitioner was willing to obey the rules of the court but he could not do so as he was not a free man. That was why Chief Justice suggested that he could tell the Governor that he wanted to obey the rules of the Supreme Court and get the order cancelled. If you were to tell the Governor that you wanted to comply with the rules of the Supreme court, the Governor will not stand in your way.

Counsel : When the original application for exemption was filed before the court, Mr. Chari took that stand (that his client was not a free man). But they have modified that stand after getting a copy of the Full Bench decision of the Bombay (Maharashtra) High Court which had stated : "As the sentence passed upon the accused has been suspended". It is not necessary for the accused to surrender to his sentence. Order XXI rule 5 of the Supreme Court rules will not therefore apply in this case.

Justice Kapur : Is there a sentence in operation ?

Counsel : According to the Full Bench decision there is no sentence in operation. The Supreme Court rule postulates that there should be a sentence in existence. In the present case, there is no sentence as it is suspended by the Governor's order.

Chief Justice : As the Attitude of the Advocate-General of the Maharashtra State and that of the Union of India will be the same—that the petitioner need not surrender to his sentence—the court would also like to hear opposite point of views in the matter. Mr. C. B. Aggarwal, a senior member of the Supreme Court Bar-Association and former Judge of Allahabad High Court,

said that the Association did not want to intervene on its own but the court wanted that they were prepared to express their views. The Chief Justice then asked Mr. Aggarwal to submit his arguments later.

The Court Room was fully packed and a number of people were standing near the approaches.

Mr. Seervai contended that the powers of the Supreme Court to frame rules under Article 145 of the Constitution of India was subject to two limitations. Firstly that power was subject to the Law of the Country and secondly, it required the sanction of the Chief Executive of the Union of India. But the power of the Executive to grant pardon or reprieves or to suspend or commute the sentence of any person was unfettered. Mr. Seervai said that his contention was that these two powers did not conflict with each other but if there was a conflict in the exercise of these two powers the unfettered power of the Executive prevailed over the power of Judiciary which was limited.

The power of commutation and reprieve was given to the highest Executive with the trust that it would be exercised to supplement and further the end of Justice and not to subvert it.

Mr. Seervai then cited a number of English and American cases to contend that the Royal prerogative in England and the President's Power in the United States of America to grant pardon and remission were recognised as powers furthering the main object of Justice.

The Indian constitution which was mostly drawn from the English and American Constitutions vested this prerogative to grant pardon and reprieve in the highest Executive of the country. Illustrating his contention, Mr. Seervai said that the power of the President to dissolve the Legislature could not be considered as interference with the power of the Legislature on the other hand this power of the Executive enabled the Legislature to have elected men who represented the best interests of the people.

Mr. Seervai, the power of pardon is plenary in nature and of necessity has to be unfettered.

Justice Kapur : Does it mean that it can be exercised in any case and in every case ?

Mr. Seervai : It is presumed that the executive does not abuse its power just as a Judge is not expected to put his own views against the Law. *The Executive can exercise the*

power of pardon at any time after the Commission of an offence—before a Trial, during a Trial and After a Trial.

In the United States the question whether the power of the President invades the power of Judiciary or Legislature is never asked. There the question has always been whether the Legislature or the Judges have invaded the power of President.

Mr. Seervai : There is nothing wrong in the order of the Governor in allowing Nanavati to be detained under Naval custody during the pendency of the Supreme Court appeal as the petitioner is under strong armed Guards for twenty-four hours. The whole object of the rule is that the accused should be available to answer the order of the court. Under the the strict Naval custody there is no possibility of his running away.

Mr. Justice Subba Rao : I find some difficulty in your arguments. Your argument assumes that if the Governor's order was valid then the Supreme Court rule would not come in. It may not be necessarily so, because in the present case there was a conviction and sentence and the accused has no right of appeal. Entertainment of the appeal is in the discretion of the Supreme Court. Unless there are valid reasons for the Governor to make this unusual repeat, unusual order, why should we use our discretion to give exemption to the accused from the rules of the Court? The accused invited the order of the Governor and we are not bound by that order.

Counsel : The Supreme Court Rules postulates that there should be a sentence to submit to. When that sentence is suspended (as in the present case) there is no sentence to submit. In case of suspension there is no sentence at all. I shall elaborate this point later in the course of my arguments.

The Counsel contended that once the power of the Governor to suspend a sentence was recognised it could not be questioned on legal grounds. The action may be commented on the political ground.

Mr. Justice Kapur : Political grounds do not move us.

Counsel : I know it Sir, but I was referring to the interest it had created in the Bar. There are factors present in the case which may make a reasonable person to ask whether the sentence can harm accused in any way before he can get redress. In the present case, the Executive is confronted with a situation which the Jury have found him

not guilty but the Sessions has made a reference to the High Court recommending that nominal or a token sentence would meet the ends of Justice. In the High Court two Judges differed on the question whether Medical Evidence relating to injuries was rightly excluded or wrongly excluded. Looking at a record of case like this can it be said that the facts had the ordinary run of cases ?

Mr. Justice Gajendragadkar : If the accused had come to this court, in its discretion might have passed appropriate orders. Where was the necessity to keep him in Naval custody and thus take away the power of this Court ?

Counsel : So far as appropriate order of this court is concerned, it would have released him on bail. Would it be wrong if a more drastic order to keep him in Naval custody was passed ?

Mr. Justice Gajendragadkar : The more drastic effect of the order (Governor's) is that this court is deprived of its power.

Chief Justice : We are here only concerned with the question whether the Governor had the power to suspend the sentence. We are not concerned with the propriety of the Governor in passing that order.

Counsel : The Governor's order is not subject to Judicial review.

Mr. Seervai said that the Governor's order only continued the custody which the three courts below had allowed.

Mr. Justice Kapur : If suppose the accused surrenders and goes to Jail and afterwards it is found that he is not guilty, then could it be said that he had served his sentence ?

Counsel : In Law the sentence will not exist but in fact he will have suffered imprisonment. At present Nanavati is still a Commander in the Navy and if by chance War Breaks out he could be called to serve.

Mr. Justice Subba Rao : By way of Illustration, let us take an appeal which is pending in the Supreme Court against conviction and sentence. The accused files an application in the Supreme Court for suspending that sentence. Simultaneously he files another application before the Governor for suspending the sentence. While the Supreme Court dismisses the application, the Governor allows it. Is the order of the Governor proper ?

Counsel : Governor's order is as Lawful as the Judicial decision of the Supreme Court.

Mr. Justice Subba Rao : Our argument is that one is acting in a Judicial field while the other acts on the Executive field and hence there is no conflict. But whatever the nature of power, the Governor in exercising that power is encroaching on the power of the Supreme Court.

Counsel : My first answer to that is that if two authorities have concurrent power to do the same thing, there cannot be any conflict. Secondly, though the effect of the particular action may be same, yet its character may be different. When the Judge reduces a sentence he is doing a Judicial Act. Can it be suggested that the Executive cannot remit a sentence ?

Mr. Justice Subba Rao : Under the Constitution the Supreme Court can entertain appeals and pass necessary order and perhaps, under the rules, suspend or stay execution of a sentence. On the other side, the Governor under Article 161 of the constitution has powers to suspend a sentence. I am suggesting that then there is a conflict of jurisdiction between Judiciary and Executive. Is it not reasonable to bring harmony between these two ?

What is wrong in confining the power of the Governor to cases where there is no appeal pending before the Supreme Court ?

Counsel : Suspension or Remission can be given by the Executive at any time, before, during or after a trial. When the sentence was suspended (as in the present case) it was determined by an authority charged with executing that power in the hope that public good would be better served if sentence was not executed either temporarily or totally.

Mr. Justice Subba Rao : Are you not conceding that the Supreme Court has power to suspend the sentence ?

Counsel : According to the Supreme Court rules till the special leave is allowed there is no question of suspension. Mr. Seervai contended that the Governor had the power to suspend the sentence till the disposal of the appeal by the Supreme Court. And this power did not conflict with the power of the Supreme Court. For example, he said, in respect of death sentence concurrent power was given to President and Governor to commute the sentence. Each power was absolute and independent.

After the Governor refuses to commute the sentence, the President commutes. Is there any conflict in that power ?

In the case of suspension of a sentence, Counsel said, all that is done is, it frees the person from punishment temporarily. So far as the offence is concerned it leaves it to the Court to decide whether the person is innocent or not.

Mr. Justice Subba Rao : Can you interfere in a Judicial field by executive action ?

Counsel : Yes, it could be done by the power of prerogative in England. And the right of *Nolle Prosequi* in India by which power is given to the Advocate-General to stay prosecution at any stage of a trial. There is no restriction on the power of a Governor to suspend or remit a sentence even while the appeal is pending.

Mr. Justice Gajendragadkar : The question is whether the order of the Governor should be limited till the appeal is admitted in this court. What troubles the court is not so much the suspension of sentence but preventing Jail custody.

Counsel : An impression is created that the Executive did not want the accused to undergo Jail custody till the matter is decided Judicially. Why should this impression arise at all ? As the Judges act Judicially. So also you must assume that the Executive to whom the power is given largely for public good has exercised this power. The order was not made by the Governor on his own. It was done after consultation with the Chief Minister. When power is *untrust* entrusted to the Highest Executive and when that power is exercised, will you say *prima facie* it is *mala fide* ? Even if it was a gross abuse of power, the remedy is political and not Judicial.

Chief Justice : We are not concerned with *Malafide*.

Counsel : I only wanted to clear this impression.

Mr. Seervai maintained that the prerogative of power both in India and the United Kingdom extended to conviction for all offences including contempt.

Mr. Justice Kapur : What is the object of this point ?

Counsel : Certain courts had doubted whether the exercise prerogative in extending pardon to conviction for contempt would not interfere with the judicial process. The Privy Council and other American Courts had held that prerogative could be exercised even for such cases. The relevancy here of this point therefore is that there is

no restriction whatsoever on the exercise of this prerogative whether vis-a-vis the nature of the offence or the time when this prerogative should be exercised.

Counsel referred to a United State's Supreme Court case wherein it had been held that the principles of pardon were not a matter of private act of grace but part of the constitutional process resorted to for the public good and welfare desired to be achieved by tendering the pardon.

It was urged that pardon was not defence of law but was something done under the law. To an inquiry from the court, counsel replied that before the enforcement of the constitution in India, the power of pardon had been delegated to the Governor-General by His Majesty in 1916. This pardon, it was pointed out, was also contained in Section 402 of the Criminal Procedure Code.

M. Seervai urged that courts could only look to the Judicial aspect involved in the tender of pardon. They could not go into the propriety or otherwise of it from the executive point of view. He referred to a decision of the Privy Council wherein the question involved was whether the operation of the order granting pardon to the appellant should be suspended pending the disposal of the appeal before the Privy Council.

Citing this authority, Mr. Seervai pointed out that inspite of such a crucial question being before the court, the Privy Council refused to entertain it and give an opinion for the reason "that the exercise and the operation of the order extending pardon was purely a matter for the executive and the courts could not interfere with it".

Counsel cited another case in which the High Court had refused to grant bail pending the filing of the appeal in the Privy Council inspite of the fact that it had granted leave to appeal to petitioner. The matter was taken to the Privy council which held that a high court did not in fact have any power to grant bail after the disposal of the proceedings before them.

But it was observed that under Section 401 Cr. P.C., the sentence imposed on petitioner could have been suspended by the provincial Government in the interest of justice and fair play.

Mr. Justice Gajendragadkar : This could be done only if the court of appeal had no power to do so.

Mr. Justice Subba Rao : Supposing during the pendency of the appeal in the Supreme Court accused applies for the

suspension of the sentence. Simultaneously, he also makes an application to the Governor praying that his sentence be suspended. The Supreme Court dismisses the application but the Governor suspends the sentence. What is the position.

Counsel : The Governor's order is good,

Justice Subba Rao : This means that the executive acting in a field in which the Supreme Court can also act encroaches upon the authority of the Supreme Court.

Counsel : If both have authority under the law the question of encroachment would not arise. He urged that even in cases where the courts had refused to reduce the sentence imposed upon a convict, the executive could and had actually in certain cases commuted the sentence.

Justice Subba Rao : Article 161 does not exclude the powers of this court. It only vests with the Governor an independent power to suspend or commute the sentence. When there is conflict of jurisdiction is not desirable to harmonize the jurisdiction rather than to raise a conflict ?

Counsel : It is desirable to resolve it.

Justice Subba Rao : Then, what is wrong in complying with the rules of this court when the special leave petition has been filed and is pending here.

Counsel : Prerogative can be exercised pending appeal in the higher courts. It was maintained that powers under Article 136 of the Constitution empowering the Supreme Court to grant special leave was a judicial function. This could not be curtailed or assailed by an executive order. But the rule making power vested under Article 142 of the Constitution was not a judicial function and, therefore, there could be no clash between the order involved in these proceedings with the judicial authority of the Supreme Court. The executive was well within its rights to bear in mind certain considerations which could not have been relied upon by a court of justice and passed orders in exercise of the powers given by Article 161.

It was further urged that the Supreme Court was not competent to suspend the sentence till after it had granted leave to appeal to petitioner. It was pointed out that even Justice Shelat who was a party to the judgement of the Bombay High Court, had observed that there was nothing morally wrong in what Nanavati had done. On the day when the order was passed by the Governor nobody knew whether or not Nanavati would get leave for filing an appeal

in this honourable court. In public interest, therefore, the executive thought of maintaining *status quo* and, therefore, passed the order.

It was submitted that if the Governor had the main powers to remit or suspend the entire sentence then the lesser power to suspend the rules could not be disputed.

Mr. Justice Gajendragadkar : We are only dealing with the situation after the application for leave to this court had been rejected by the Bombay High Court. The Governor's order prevents Nanavati from being handed over to Jail custody.

In reply, counsel maintained that what had been prevented was the working out of the sentence and not the custody.

Mr. Justice Kapur : Who is to be the judge whether or not the Governor had used the power bonafide? Can the court look into it?

Counsel contended that even if the Governor's order involved in the proceedings was an abuse of the executive power, he was not there to defend its propriety or otherwise.

A person who had not surrendered to the sentence imposed by the courts below would normally have no right to invoke the special jurisdiction from the Supreme Court. He had not obeyed the order and was, therefore, in contempt.

But the special jurisdiction vested in the Supreme Court to allow special leave to appeal against the impugned judgement, including the sentence, was not hedged in by any restrictions, and therefore, this Court would always have the jurisdiction to waive the operation of a rule framed by itself, the only condition being that the judgement impugned must appear to the Court to be unjust.

It was further stated that the rule would not apply where the sentence imposed had been suspended, because there was no sentence which could be surrendered to and, secondly, because petitioner was acting under orders passed according to law.

It was contended that the very nature of the power of pardon was such that its exercise must necessarily interfere with the judicial process.

Counsel recalled a case from Ireland where persons alleged to have been guilty of fomenting a rebellion against the State had not been prosecuted because the executive

opined that the prosecution would not result in conviction.

On the analogy of this, counsel argued that the power of pardon could be exercised by the executive on any grounds whatsoever. Quoting from the book 'Constitutional Law' by Wade and Philips, he submitted that the "power of pardon is to be exercised by the king usually after conviction and on the advice of the Home Secretary for some special reason".

Hallsbury's Criminal Law was also cited, and counsel relied on an observation stating : "The prerogative of mercy may be exercised regardless of the pendency of the appeal and even after the disposal of the appeal".

Mr. Justice Subba Rao : Various articles of the Constitution vest the Supreme Court with power to suspend the sentence and further leave it free to suspend or not to suspend. Article 161 gives an identical power to the executive. There are to be harmonized.

Counsel : It will be one of my submissions that the rule making power of this Court is to be sub-ordinated not only to the law of the land but also to the authority of the executive. Before these rules can be enforced, the President must approve of them. These rules therefore cannot, in any way, fetter or restrict the powers vested in the Governor under Article 161.

Counsel contended that the rules framed by the Supreme Court were only a piece of delegated or subordinated legislation, and therefore they could not take away the President's or the Governor's power to pardon, suspend or reprieve a sentence under Articles 72 and 161, respectively.

Not even a law by Parliament could take away this power from the President and the Governor. Remedy for the abuse of this power could be provided by a law of Parliament.

Under the guise of the rule-making power, this Court, while exercising powers of delegated legislation, could not whittle down the President's or the Governor's power of pardon.

Mr. Justice Subba Rao : How do you say that the rule-making power vested in the Supreme Court is subordinated legislation ?

Counsel : The principal legislating power is the legislature itself. Therefore, all other powers or authorities which

are given the power of legislation would be subordinate to the principal legislature. Moreover, the very fact that a rule framed by this Court must be approved by the President before enforcement makes it delegated legislation.

Article 136 of the Constitution was then dealt with. It was stated that under this Article this Court had been given an absolute and unfettered power to correct a judicial error found in an order or a judgement of a court or a tribunal. But this power could not be exercised with respect to a ministerial order. On the exercise of this authority there were no restrictions contained in the Constitution.

There were some self-imposed restrictions laid down by this Court itself in various judgements, but such restrictions were departed from occasionally in the interest of justice. How could such a power ever collide with the power of pardon vested in the executive under Article 161, counsel asked.

Dealing with Article 142, he submitted that it enabled the Supreme Court to pass any order felt necessary in the interest of justice. Such orders could be passed in any matter pending before this court. But these orders would be executed, implemented or enforced not by this Court but by executive or under a procedure laid down by Parliament.

Mr. Justice Subba Rao : Cannot an order refusing suspension of sentence be passed under this Article ?

Counsel said : "It can be. But the only result will be that warrants for the arrest of the person concerned will be issued. The moment these warrants are issued, the function of this Court comes to an end. Thereafter it is for the executive to decide how they would be implemented".

On consideration which will be extraneous to the functions of this court, the executive can always decide that the person concerned will not go to jail but will remain in naval custody.

Chief Justice : Can this Court or the High Court suspend the sentence pending the disposal of the petition for special leave ?

Counsel : No.

Mr. Justice Subba Rao : I think it can be done under Article 142. The Article talks of "pending matter." Special leave application would be a matter.....

Counsel : May be so. Any order in the interest of justice may be passed, but that would not mean that just

because this Court can pass such an order, the executive cannot.

Mr. Justice Subba Rao : The point is what happens when the appeal is actually pending before the Supreme Court ? The sentence and the conviction are alive. They have not been wiped out by an absolute pardon. The Supreme Court says that the man must go to Jail. The executive says, No. How can the powers then be treated as criss-cross as counsel had said ? There is a definite conflict.

Counsel : While studying this question, a sharp distinction must be maintained in the discretion of the court which is to be exercised exclusively on judicial principles and the power of the executive which can be used on any ground whatsoever.

In support, counsel cited a case of a headlong clash between the judiciary and the executive.

A writ issued by the High Court was sought to be served on Parliament. Having issued the writ on a habeas corpus petition, the Court instructed its offices to serve the writ. If they had not served the writ, they might have been guilty of contempt. When an attempt was made to serve the writ, Parliament treated it as a breach of privilege.

The court officials, who had gone to serve the writ, were therefore, imprisoned for contempt of the House.

While returning the writ, all that was mentioned was that the officer concerned had been imprisoned.

The question arose as to which authority was higher. The Court or Parliament ?

The Court held that Parliament had absolute jurisdiction to determine whether contempt had been committed of its own authority. The Court could not inquire into the reason of the order if none was mentioned. The result was that the court officials deputed by the Court itself for executing its orders had been imprisoned while obeying those orders and the court could not release them.

The court recognized that Parliament's prerogative was absolute.

Because of the provisions of law, the court had to surrender its own authority otherwise considered supreme, to the supreme authority of Parliament.

In a murder trial, the Supreme Court refuses bail but the executive, in exercise of its powers, orders that pending the

disposal of the proceedings in the court, the man shall walk free. Again, there is no interference with the authority of one or the other.

While maintaining the sentence of death on the appellant, Mr. Justice Imam, now a Judge of the Supreme Court, had held : "Law enjoins the sentence of death. It must be imposed unless there are mitigating circumstances for judicial interference.....there is another forum whose prerogative of mercy is much wider".

This forum, counsel contended, was the forum of the executive created by Section 401 of the Code of Criminal Procedure and Articles 161 and 72 of the Constitution.

Counsel : Then started dealing with that part of the order which lays down a condition that during the period of the suspension of the sentence, Nanavati shall remain in Naval custody. It was contended that in all jurisdictions it had been recognized that if there is power to grant total freedom to a man there is always the power, though not explicitly stated, to extend partial clemency.

Section 401 of Cr. P. C. empowers the appropriate State Government to suspend or commute "*at any time and on any conditions acceptable to the person concerned*" the sentence imposed on him.

Mr. Justice Gajendragadkar : Provided the conditions are lawful.

Counsel : Of course. *Only unlawful conditions would be those which are immoral or against public policy or are impossible of performance.* This section establishes three facts. First, that the power is there, secondly, that the order can be conditional and thirdly that the conditions imposed should be acceptable to the person concerned. Sub-section 4 of this section lays down that the condition imposed may be the one which is to be fulfilled by the person concerned himself or which is to be complied with by other persons

Example of political prisoners was given. Occasionally, appropriate State Governments' order, the release of political prisoners subject to the payment of fine, payable by the prisoners themselves or by anyone else.

It was then urged that the release of a prisoner could be conditioned by an order that he should remain in his own house for a specified period. This being the law for the exercise of powers under Section 404, the President and his State Governor, should, the counsel

submitted, be deemed to have identical powers under Articles 72 and 161 of the Constitution. Counsel submitted that the spirit of law has been scrupulously maintained in the order now involved in the proceedings before this court.

It was further submitted that according to well established principles of construction an order passed under Article 161 must be interpreted in a manner which will best achieve the purpose in view. These powers were used for mercy. No technicalities should come in the way of its implementation.

At this point the court rose for lunch.

Continuing his arguments after lunch, counsel submitted that what could not be done under the statute law by the courts could be by the power of pardon of the executive. Counsel then traced the evolution of punishment by transportation for life. In the distant past the Crown used to tender pardon on condition that the prisoner either transported himself across the seas or agreed to be sent across. A stage then arrived when pardons were granted on condition the prisoner served in the Navy. This practice continued till 1771 when the Lords of the Admiralty protested. According to them, the introduction of such persons in the navy adversely affected its morale. This practice was given up but transportation of life remained. The statute law now incorporates this punishment which could once be inflicted only by the consent of the person concerned.

Chief Justice : Can you cure an illegality by consent ?

Counsel : The point does not arise. They do not say cure the illegality. The King feels that some punishment is necessary. The prisoner is sent to jail under the law. This is against his will. The executive wants to interfere and then makes an offer to him that he could be given a pardon on condition of his agreeing to spend a part of his life in a correction home. If he agrees to the change of detention then there is no illegality about the order. The exercise of the power of pardon does not result in anything illegal. It is the legal exercise of a lawful power. The proposition that *illegality cannot be cured even with consent* does not apply to the exercise of such a power. And a unilateral act which would otherwise be illegal loses this character provided the condition imposed is not illegal.

While elaborating this point counsel cited various cases

decided by American courts in which conditional pardons had been upheld. It was held that the Governor was competent to tender pardon on condition the prisoner remained in a hospital for the insane, or agreed to reimburse the State for the expenses incurred on the proceedings connected with his trial. Further, it was held in certain cases that a conditional pardon extended to the condition that prisoner abstained from alcoholic drinks and agreed to report about his good behaviour to the prescribed authority.

Counsel, then submitted that none of these conditions could be supported on the basis of any statutory law, but were upheld because the courts felt that in the interest of justice here was nothing wrong about them and that they violated no express provision of law. In this case, it was submitted, it has not been shown that the condition laid down in the Governor's order prescribing naval custody for Nanavati was against the provisions of any law. Further, Nanavati has accepted the conditions and the Navy had not protested. There was, therefore, nothing illegal.

Counsel contended that the application for surrender moved in the Supreme Court was misconceived. All that was necessary was to bring to the attention of this Court the fact that the High Court, which had convicted Nanavati, had refused to issue warrants of arrest so that it was not possible for the authorities to take over Nanavati in judicial custody. Secondly, Nanavati had agreed to naval custody. Counsel also pointed out that the Bombay High Court had upheld the Governor's order.

Mr. Justice Gajendragadkar : How is that relevant ?

Counsel : It is relevant because as a result of that judgement there is no warrant of arrest to be executed against Nanavati.

The question of jail custody therefore, does not arise.

Mr. Justice Gajendragadkar : The order is unprecedented.

Counsel : Recently there was the **case of Chessman** in which there was a long battle between the court and the executive. Sometimes the executive stayed the execution and on other occasions the court.

Counsel then cited a number of cases in which it had been held that pardon could be granted even when the sentence awarded to the prisoner was the subject of appeal or review by the Supreme Court.

Mr. Justice Gajendragadkar : This is not the point. Pardon you could grant. The point here is that at the time when the matter is pending for obtaining leave from the Supreme Court you suspend the sentence. This is unprecedented.

Counsel : Talking of precedents, Yes. Are you not glad that this power is so sparingly exercised in India that there are no precedents Counsel then posed a question as to whether the court will strike down this order on the ground that it could be upheld if it was without a condition but cannot be upheld when a condition about jail custody is incorporated in it. It was submitted that accepted rules of construction should be followed to deal with this order passed in the interest of justice.

Mr. Justice Gajendragadkar : Does the naval custody of Nanavati infringe any of the Navy rules ?

Counsel : No. Naval custody is not only according to the manner prescribed but also according to usage.

Mr. Justice Gajendragadkar : *During the last 25 years at the Bar and the Bench, I have not come across a single case of this kind.*

Mr. Seervai : The absence of a precedent should convince Your Lordship how sparingly this power has been used by the executive. If cases are few and far between, it shows the responsible way the executive uses its prerogative.

Mr. Justice Gajendragadkar : It is only one way of looking at it. If the High Court's warrant is returned unexecuted, is not the High Court entitled to ask the reasons for it ?

Mr. Seervai : Will this Court, by construction, strike down the order which, far from hindering justice, furthers it only because it is conditional though made in the interest of justice ?

Mr. Justice Kapur : How can we solve this problem without knowing the usage ?

Counsel : As I pointed out to the High Court it will take considerable time to collect information about usage.

Counsel then read the definition of Naval custody from the Act. Naval custody therein is defined as meaning the arrest or confinement of a person in the manner prescribed or in accordance with usage.

Mr. Justice Subba Rao : Not having shown the usage how does this provision of law help you ?

Counsel : It is not for me to show that the order is not legal on the face of it. In order to show that the order is illegal some contravention or some provision of law has to be shown. No one has as yet shown this.

Counsel pointed out that the Bombay High Court had held that the two parts of the section defining Naval custody were disjointed and that the portion which alluded to the usage was not relevant. This conclusion, counsel submitted, was wrong.

Mr. Justice Subba Rao : You want us to presume that the custody prescribed by the Governor's order is according to usage. How do you show that ?

Counsel : I submit that when the Navy has received Nanavati in its custody without any objection, *prima facie* the custody is legal, there being no law or rule prescribing such custody. It should be presumed to be legal according to usage.

Chief Justice : So, you are relying on a presumption to be raised under the Evidence Act. You have not placed any evidence in the form of affidavit.

Counsel : That is so. In this case no evidence was required to be or was proposed to be led. *Prima facie* we are correct.

NAVAL CUSTODY

Mr. Seervai told the Court that there was no illegality in Commander Nanavati being kept in naval custody. He was still in service and subject to naval discipline.

The Advocate-General said that there was no collision between the judiciary and the executive. The executive had the power to remit or suspend sentences passed by courts, he said. *"An interim order (of the court) made as regards non-suspension cannot stand on a higher footing than a substantive sentence imposed by law"*.

Mr. Seervai quoted extensively from the judgement of the Bombay High Court upholding the validity of the Governor's order and said there was no force in the argument that a conditional suspension of sentence could not be made.

Mr. Justice Gajendragadkar : Can the Governor make an order calling upon the Provost-Marshal to keep him (Commander Nanavati) in detention ?

Mr. Seervai : A provision in the rule could be made

which would give the Governor that power, because the Criminal Procedure Code is a concurrent subject.

The Navy Act showed that Commander Nanavati was still in service and subject to discipline, he added.

It was relevant to point out that no person had complained to the court invoking its jurisdiction that anything being done by the naval authorities was contrary to law.

Mr. Justice Gajendragadkar : The fact that there is no complaint would not be decisive.

Mr. Seervai : Because a thing is not lawful, the court cannot declare it unlawful unless it is brought before the court. The jurisdiction of the court is not invoked by anybody saying what is being done by the Navy is illegal.

Referring to the power of the executive to remit or suspend orders made by the Supreme Court under Article 142 of the Constitution. Mr. Seervai said that, if a substantive sentence which had been imposed could be remitted even though the matter was pending before the Supreme Court, "I will submit that is reasonable and rational to say that an interim order which your Lordships are capable of making is not on a higher footing than a final order".

COURT'S POWERS

Mr. Justice Subba Rao said that there was a difference between pardon and remission on the one side and reprieve and suspension on the other. In regard to the exercise of the former (by the executive), the Supreme Court had no powers. When it came to suspension, the Supreme Court had certain powers.

Mr. Justice Subba Rao said that, in those circumstances, there were two ways of reconciling the position. "There is Article 161 (the power of the Governor to grant pardons etc.) on the one side and Articles 134, 136, 142, 144, 145 (the jurisdiction and powers of the Supreme Court) on the other side. One way of reconciling was by the Supreme Court saying that they had no power when the executive exercised its powers. The other way was to say that while both had powers, so far as pardon and remission were concerned, the executive had the exclusive power, but as far as suspension and reprieve were concerned, when proceedings were pending in the

Supreme Court, the executive could not make an order infringing upon the Supreme Court's power".

Mr. Seervai : If judicial power in its nature is determining the matter judicially, then how can it be said that power ever collides with a determination on a different basis ? It was not correct to say that in case of a remission the Court was deprived of the power of judicial determination. Before you invoke the conflict of power, you must see what each (the judiciary and the executive) is doing.

Besides, the power of the Supreme Court under Article 142 was a general power in all cases. The power of the Governor under Article 161 was a special power. If there was any collision between the general power and the *special power*, the rules of construction required that the special power should prevail.

He also submitted that there should not be different constructions in regard to the general power, pardon and the limited power of suspension.

At the conclusion of Mr. Seervai's arguments, Mr. H. N. Sanyal, Additional Solicitor-General appearing for the Union of India, said that whatever could be stated on the case had been said by Mr. Seervai and that he would adopt those arguments. Mr. Sanyal reiterated that powers given to the Supreme Court under Articles 142 and 145 of the Constitution (the enforcement of decrees passed by the Court and the framing of rules) were subject to the powers conferred on the executive under Article 161. So, the Supreme Court, while exercising its power, should not disregard the powers of the executive under Article 161. If this position was understood, Mr. Sanyal said, there could not be any conflict. He added that the relevant Articles had to be construed in a "harmonious way".

Mr. Justice Subba Rao : I entirely agree that there should be harmonious construction.

Mr. Justice Kapur : If both are given the same powers there will be collision.

Mr. Sanyal : There may be overlapping, but the powers do not collide.

Mr. Justice Gajendragadkar : In theory, there is no overlapping but, in fact, there may be grounds for overlapping.

Mr. Sanyal : I agree. Rules made by the Supreme Court are subject to any law made by Parliament, while the

power of the Governor under Article 161 is on a higher footing. It is unfettered.

Mr. Dadachandji, counsel for Commander Nanavati, said that he would adopt the arguments of Mr. Seervai and Mr. Sanyal, Mr. Justice Subba Rao asked counsel whether he would not forth any grounds for granting exemption to Nanavati from surrendering to his sentence as required by the Supreme Court rules. Counsel said he was not urging that point at all.

MR. AGARWAL'S ARGUMENTS

Mr. C. B. Agarwal, appearing as *amicus curiae* on behalf of the Bar Association of India, contended before the Constitution Bench of the Supreme Court of India that the Governor of Bombay (now Maharashtra) had no authority to suspend the life sentence on Commander Nanavati and allow his detention in naval custody during the pendency of his appeal before the Supreme Court.

He submitted that the Governor had power only to suspend the sentence till the appeal was filed in the Supreme Court but he had no power to suspend the sentence "until the disposal of the appeal by the Supreme Court."

Both under Article 142 of the Constitution (enforcement of decrees and orders of the Supreme Court) and under its rules, the Supreme Court had specific power to stay or suspend the execution of a sentence. The executive, he contended, could not exercise the same power during the same period and in the same matter in which the Court had jurisdiction.

When the case was called on for hearing at 11-15 on 22. 7. 60. Mr. C. B. Agarwal, who was to resume his arguments, was not present.

The Chief Justice remarked that they were grateful to him for appearing *amicus curiae* but professional etiquette required that they should have been informed if he was not available.

Later, Mr. Agarwal apologised to the Court for his absence and prayed that he may be allowed to make his submissions on some of the important points. The Chief Justice declined to accede to his request and said, "*We are not prepared to extend our courtesy to you any longer.*"

The Court then called upon, Mr. Seervai, Advocate-General of Maharashtra, to reply to the points made against

him. The Chief Justice observed that he must meet the point that there was a conflict between the power of suspension given to the Supreme Court under Article 142 and the power of the Governor to suspend the sentence passed on accused person.

Mr. Seervai submitted that, taking suspension out of Article 161 postulated that there was a conflict. In his opinion, he said, there was no conflict between the power of suspension vested in the Supreme Court and the power of suspension remission or commutation given to the Governor and the President.

The executive had been armed with the power of suspension to mitigate the rigours and hardship of the law. This power under Section 401 Cr. P.C. Mr. Seervai said, was unlimited. The topic of legislation was direct and specific. This section appeared in a chapter on "suspension, remissions and commutations of sentences". Comparing it with Section 426, which appeared in a chapter on appeals, this provision enabled an appellate court, pending any appeal by a convicted person, to make certain orders. This power could not be exercised in the absence of an appeal, and without reasons to be recorded in writing.

Counsel contended that the power under Section 401 could be exercised by the executive as a matter of grace and out of mercy. This power was absolute, but could neither be claimed as of right nor was enforceable by a court, while the power under section 426 was to be exercised on judicial lines and could be claimed as a matter of course.

Mr. Seervai submitted that the executive could exercise the power "at any time". There was no condition attached to its exercise nor was it subject to any limitation. In other words it was absolute. Counsel further contended that no such power was conferred on the Courts under Section 426. It could not be exercised in the absence of an appeal. On careful examination, he said, it would be clear that the ambit, scope and extent of the two powers were quite different.

Mr. Seervai submitted that, while the executive enjoyed unlimited power of suspension, the power of the court in this behalf was fettered and subject to conditions. The court, moreover, could release the person on bail or on his own bond.

Mr. Justice Kapur : Must a court ask for bail or bond ?

Counsel : Yes, My Lord.

Counsel submitted that the principle of construction was not to assume a conflict where there was none and then try to resolve it. The court should first see whether there was a conflict and then resolve it. Looking at the chapters in which the two provisions appeared, the complete difference of terms and magnitude of power, it was clear that no conflict arose between these two powers. One power belonged to the executive and the other was conferred on the judiciary. If, counsel contended, power was given to two co-ordinate authorities, in the event of their exercising it, it would not create a conflict.

Mr. Justice Subba Rao : In this case, the appeal lies to the Supreme Court. If the Supreme Court thinks otherwise, it can suspend the sentence.

Counsel : But somebody must move the court and invoke its jurisdiction to set aside the sentence.

Mr. Seervai submitted that the jurisdiction of a court was not something in the abstract. Unless someone came before the court and asked for justice, its jurisdiction would not come into play.

The invocation of jurisdiction had to be done by the person who asked that justice be done to him. If there was no invocation, the question of the invasion of power or jurisdiction did not arise.

Counsel submitted that Article 142 was not addressed to the conferment of power but this power was given to the Supreme Court to enforce its orders and decrees. He referred to Sections 205 and 209 of the Government of India Act, 1935, and said that the Federal Court had limited jurisdiction and it could not enforce its own orders or decrees. It could only remit the case to the High Court from which the appeal was brought with a declaration as to the judgement, decree or order which was to be substituted for the judgement, decree or order appealed against and the High Court was to give effect to the decision of the Federal Court.

Mr. Justice Gajendragadkar : What is the point that you are making ?

Counsel : I want to show to your Lordships that Article 142 makes good the deficiency which existed in the Government of India Act, i. e., the Federal Court was not armed with machinery to enforce its own order or decrees. It could only give directions to the court below.

Mr. Seervai Referred to the famous English case—**Sheriff of Middlesex**, where the Sheriff carried out the orders of the Kings Bench but the house of Commons Hauled the Sheriff for contempt and the court was helpless to prevent it because the house of commons had the power to arrest the Sheriff for contempt without assigning reasons. Counsel cited this case to show that both the house of Commons and the Court acted within the Law although they came into clash.

Counsel contended that it was a well settled law that when an authority lawfully exercised its powers there cannot be any question of conflict.

Mr. Justice Subba Rao : You have to draw a difference between the Executive's power of pardon and other powers like remission, reprieve etc. take a case where an appeal is pending before the Supreme Court, in which Governor had given pardon to the accused. In that case there is no sentence for the appellate court to operate on. But in a case where conviction and sentence are remitted or suspended the question of conflict will arise.

Counsel : As a Judge you can say that a person should be in Jail custody in the interests of Justice, but the President has the power or authority to say that although the Supreme Court was right, on the ground of mercy or policy or necessity of the case, that person should be left free. And the President's order has to prevail. The two functions are distinct—One is Justice and the other is Mercy.

On the question whether condition could be attached to the Governor's orders (namely that Naval custody of Nanavati), should continue, counsel said that if the Governor had power to totally free a man, he could certainly extend his clemency to a lesser extent. The law reorganised the principle both of conditions with the consent of the accused and conditions independent of volition.

Mr. Seervai said that in issuing the order the Governor had scrupulously adhered to the spirit of the law.

Counsel then cited the judgement of the Bombay High Court which had upheld the validity of the Governor's order.

Tracing the facts leading to the keeping of Nanavati under Naval custody, Mr. Seervai added that the Magistrate, the Sessions Judge and the High Court had accepted that Nanavati could be held in Naval custody during trial. In

Judicial opinion that custody unsecured to the court the body of the accused to answer whatever charges might be levelled against him.

Mr. Justice Subba Rao asked whether the Naval custody was legal or not.

Counsel said that the Governor had the power to decide whether the accused should be kept in Naval custody or civil Jail. Moreover Nanavati had accepted the condition of Naval custody and no application had been made by the Navy in any Court to say that they did not want to keep him there. Mr. Seervai also said that there was no party complaining against the detention of Nanavati in Naval custody.

Replying to the question whether the Governor had the authority to order Nanavati's detention in Naval custody Mr. Seervai said that the Governor by his order had only preserved what was held valid by the Bombay High Court and the Lower courts. The question, he said, was whether such an order could be passed when the matter was before the Supreme Court. The test of legality of the order was whether the condition of Naval custody was put on Nanavati with his consent. He said that in the present case Nanavati had accepted the condition and the Navy had also received him to keep him in its custody. There could, therefore, be no illegality in the Governor's order.

Mr. Seervai cited a number of British, American and Indian cases to show that in many cases sentences were substituted by lesser punishments on various conditions consented to by the accused. He said that generally to substitute a sentence was illegal but it lost its illegal character if the lesser punishment was given on a condition agreed to by the accused, and provided the condition was not forbidden by law.

He submitted that there was nothing to show that the Naval authorities could not keep Nanavati in their custody. He said that the High court which was competent to go into the matter, had decided to issue no warrant of arrest. Also nobody had moved any court against Nanavati's detention in Naval custody. Will this court then decide this question without any respondent and without any body complaining against and set a precedent? He asked.

Mr. Seervai said that the court could not strike down the Governor's order if it had completely pardoned the accused. The court, he added, also could not strike down an order

reducing the sentence of an accused with some condition, say, that he would remain in some house, or in some Hospital or would keep to behaviour. The question before the court was whether it could strike down an order which ensured twenty four hours custody of the accused.

Mr. Seervai then submitted that under the Navy act a person could be kept in custody according to the manner prescribed or according to the usages of Naval service. When the Naval authorities had agreed to keep him in their custody it could not said that the custody was not according to the usages of the Navy.

Mr. Justice Kapur : If we know what are the usages of the Navy.

Mr. Seervai : Usages of the Indian Navy should be generally those of the British Navy. It was very difficult to collect information about all the usages of the Indian as well as the British Navies. We had asked the High Court, that if it was necessary to collect material about usages of the Navy, we should be given two or three months' time but the court had found it unnecessary.

Before saying that the custody was illegal, Mr. Seervai said, it must be shown that it was not according to usages. There was no evidence on record to show this, he submitted.

Chief Justice : Art from the assumption that the custody is in accordance with the usages of the Navy, was there any affidavit by any authority of the Navy to show that it was so ?

Mr. Seervai : We are not asked to do it.

Apart from the usages, Mr. Seervai submitted, the Naval authorities could keep an accused in their custody during trial. He contended that Nanavati's trial could not come to an end till the Supreme Court had given its final decision in his case. The Navy could, therefore, keep him in its custody till the final judgement was given by the court and till then his Naval custody was perfectly legal.

Mr. Seervai submitted that Section 295 of the Government of India Act gave to the Governor-General the power of suspension. He said that this section opened with the words "nothing in this Act". This meant that the power given to the Federal Court under Section 209, which set out the mode of execution of the court's orders and decrees, could not override the right of the preroga-

give given to the executive under Section 295. He submitted that this historical back-ground provided a clear and categorical answer to the argument that Article 142 cut down the power of the executive under Articles 161 and 72.

Mr. Seervai compared the powers of the Supreme Court under Article 142 with those of the Governor under Article 161, and said that the power of suspension given to the court was a matter of procedure while the power given to the Governor was plenary.

Mr. Justice Gajendragadkar : There is a power in this court to grant suspension of sentence when a criminal matter is before it. Such a power is also included in Article 161. There is thus an apparent conflict.

Counsel : On the principles of harmonious construction, not only should the powers under Articles 142 and 161 be compared, but the powers under Articles 142 and 145 must also be looked into.

Mr. Justice Subba Rao : Under Article 142, the court can pass an order as might be necessary for doing complete justice.

Counsel : But justice has to be done according to well-settled judicial principles. If a rule were made under Article 145 by the Supreme Court that a sentence would not be suspended unless two sureties were given by the accused, then such a provision would prevail, notwithstanding Article 142.

Mr. Justice Gajendragadkar : We have been asked to take out of Article 161, the power of suspension which is given to the Supreme Court under Article 142. You concede that, under Article 142, we are empowered to suspend.

Counsel : I submit "no". Your Lordships have the power to suspend under Article 142, read with Article 145.

Mr. Justice Gajendragadkar : Why should we go to Article 145 at all ?

Counsel : Your Lordships' power to suspend is subject to any law. If Parliament provided that, in any matter pending appeal, suspension could only be granted on bail or bond. Parliament may also take away the power of suspension in certain specified cases.

Mr. Justice Wanchoo : That is a matter of doubt whether Parliament can take away that power.

Mr. Justice Subba Rao : Article 142 confers absolute

power on the Supreme Court to suspend sentence and Article 145 is discretionary and procedural and it cannot touch the substantive right.

Counsel : Then what is true of Article 142 would be equally true of Article 161 and the question of conflict does not arise.

Mr. Justice Gajendragadkar : What was troubling us was, if we release a person on bail, on, say, Rs. 5,000 could the Governor cut it down to Rs. 2,000 ?

Counsel : Yes, he could do that.

Mr. Justice Gajendragadkar : The two powers then will be operating in the same field ?

Counsel : Article 72 distinctly contemplates that the President could suspend, remit or commute a sentence of death exercisable by the Governor. This is an illustration of the two authorities working in the same field.

Mr. Justice Gajendragadkar : There is an express provision to that effect. But is there a single instance where during the pendency of an appeal before the court of criminal appeal, the executive had exercised the power of suspension ?

Counsel cited an American case to show that reprieve was granted by the Governor pending an appeal. He also drew the attention of the Court to Ghosh's case where the Governor of West Bengal had suspended his sentence pending an appeal to the Supreme Court.

Mr. Seervai contended that, where power were plenary in term and the circumstances of the case required mitigation, the prerogative of reprieve or pardon could be exercised. So far as the law in India was concerned, it was embodied in Section 401 Cr. P. C. under which power could be used at any time. The principle of construction, he said, required that words which were clear and unambiguous should be given full meaning and should not be cut down by interpolating into it limitations from another provision which might be limited in purpose and scope.

Mr. Seervai submitted that the power of suspension was mentioned in Article 161 along with remission, commutation and pardon. The word "**suspension**", he said, would partake of the same colour and same power as that of "**pardon**". The Constitution coloured it with the same hue as the other words.

Chief Justice : You conceded that Article 142 contains the power of suspension.

Counsel : I was just trying to meet an argument. I did not realise the full implications of it. I should not have said it. The power of the court is not interfered with the executive. The courts do justice according to law and certainly justice is not interfered with if the executive exercised its power.

Chief Justice : The executive is bound to execute the orders of the court.

Counsel : Yes, My Lord, If the executive does not carry out the order of the court without exercising its power under Section 401, it would be unmitigated contempt. But, if an order was made in exercise of a power, then it was quite different. In fact, there was no conflict between the two powers.

Mr. Justice Subba Rao : Why do you say so. They do collide physically, though not psychologically.

The Supreme Court adjourned hearing at this juncture reserving the Judgement.

